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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

**THINK FINANCE, LLC, *et al.*,
Debtors.¹**

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

**NOTICE OF FILING OF SUPPLEMENT TO APPENDIX TO DEBTORS'
CONSOLIDATED BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
OF CERTAIN VIRGINIA AND TEXAS CLAIMS AND OBJECTION TO PLAINTIFF
STEPHANIE EDWARDS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that on July 27, 2018, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), filed the *Appendix to Debtors' Consolidated Brief in Support of Motion for Summary Judgment of Certain Virginia and Texas Claims and Objection to Plaintiff Stephanie Edwards' Motion for Partial Summary Judgment* [Dkt No. 714] (the "Appendix") in the above-captioned bankruptcy case.

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit A is a supplement to the Appendix (the "Supplement").

PLEASE TAKE FURTHER NOTICE that a copy of the Supplement may be obtained at no charge at <https://www.americanlegal.com/TF> or for a fee at <https://ecf.txnb.uscourts.gov>.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949).

PLEASE TAKE FURTHER NOTICE that subsequent to the filing of the Appendix, the Debtors received signed declarations from certain of the deponents whose excerpted deposition transcripts were included in the Appendix. These declarations, together with a reference to the applicable Appendix document each declaration supplements, are included in the Supplement attached hereto as Exhibit A.

DATED: August 7, 2018

Respectfully submitted,

/s/ Gregory G. Hesse

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Exhibit A
Supplement to the Appendix

**SUPPLEMENT TO APPENDIX TO DEBTORS' CONSOLIDATED BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT OF CERTAIN VIRGINIA AND TEXAS
CLAIMS AND OBJECTION TO PLAINTIFF STEPHANIE EDWARDS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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| 10 | Affidavit of Steven Haynes in Support of Debtors' Motion for Summary Judgment of Certain Virginia and Texas Claims | TF App. 0826 |

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

**AFFIDAVIT OF JASON HARVISON IN SUPPORT OF DEBTORS' MOTION FOR
SUMMARY JUDGMENT OF CERTAIN VIRGINIA AND TEXAS CLAIMS**

I, Jason Harvison, having been duly sworn on oath this 27th day of July 2018 state as follows:

1. I am over 21 years of age and am competent to testify to the statements set forth in this affidavit. The statements set forth in this affidavit are true and correct to the best of my knowledge, information, and belief based on my personal knowledge.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949) (collectively, the "Debtors").

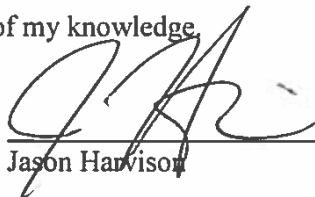
2. On April 17, 2018, I was deposed, in person, under oath (the "Deposition"). A true and correct copy of excerpts from the official transcript of the Deposition are attached hereto as Exhibit A (the "Transcript").

3. I adopt, restate and incorporate the excerpts from the Deposition, as recorded in the Transcript, as my statements in support of the Debtors' *Motion for Summary Judgment of Certain Virginia and Texas Claims*.

4. If called upon, I could and would testify to the facts contained herein and the statements made at the Deposition as recorded in the Transcript.

Executed on this 27 th day of July 2018, in the County of Tarrant, Texas

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



Jason Harvison

Jason Harvison

| | |
|---|--|
| <p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p>COMMONWEALTH OF PENNSYLVANIA * BY ATTORNEY GENERAL JOSH * SHAPIRO, * Plaintiff, * * VS. * Civil Action * No. 14-7139-JCJ THINK FINANCE, INC., et al., * Defendants. *</p> <p>*****</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF JASON HARVISON APRIL 17, 2018</p> <p>*****</p> <p>DEPOSITION of JASON HARVISON, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 17th day of April, 2018, from 8:53 a.m. to 4:22 p.m., before Christy R. Sievert, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the Fort Worth Club, 306 West 7th Street, Fort Worth, Texas 76102, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p> | <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued)</p> <p>2 COUNSEL FOR THINK FINANCE, INC.:</p> <p>3 MR. MATT GATEWOOD 4 Eversheds Sutherland (US), LLP 5 700 Sixth Street, NW, Suite 700 6 Washington, D.C. 20001 7 Phone: 202-383-0100 8 E-mail: mattgatewood@eversheds-sutherland.com</p> <p>9 COUNSEL FOR VICTORY PARK CAPITAL:</p> <p>10 MR. DANIEL P. SHAPIRO 11 MR. MATTHEW W. HAWS 12 Katten Muchin Rosenman, LLP 13 525 W. Monroe Street 14 Chicago, Illinois 60661 15 Phone: 312-902-5622 16 E-mail: daniel.shapiro@kattenlaw.com 17 matthew.haws@kattenlaw.com</p> <p>18 COUNSEL FOR NATIONAL CREDIT ADJUSTERS:</p> <p>19 MR. PATRICK DAUGHERTY 20 Van Ness Feldman, LLP 21 1050 Thomas Jefferson Street, NW 22 Seventh Floor 23 Washington, D.C. 24 Phone: 202-298-1874 25 E-mail: pod@vnf.com</p> <p>ALSO PRESENT: GUS PHILLIPS, Videographer KEVIN BYERS</p> |
| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 COUNSEL FOR THE COMMONWEALTH OF PENNSYLVANIA:</p> <p>3 MR. IRV ACKELSBURG 4 MR. JOHN J. GROGAN 5 Langer, Grogan & Diver, PC 6 1717 Arch Street, Suite 4130 7 Philadelphia, Pennsylvania 19103 8 Phone: 215-320-5701 9 E-mail: iackelsberg@langergrogan.com 10 jgrogan@langergrogan.com</p> <p>11 MR. SAVERIO "SAM" MIRARCHI 12 Senior Deputy Attorney General 13 Bureau of Consumer Protection 14 1600 Arch Street, Suite 300 15 Philadelphia, Pennsylvania 19103 16 Phone: 215-560-2445 17 E-mail: smirarchi@attorneygeneral.gov</p> <p>18 COUNSEL FOR JASON HARVISON:</p> <p>19 MR. RICHARD L. SCHEFF 20 Montgomery, McCracken, Walker & Rhoads, LLP 21 123 South Broad Street 22 Philadelphia, Pennsylvania 19109 23 Phone: 215-772-7502 24 E-mail: rscheff@mmwr.com</p> <p>25 COUNSEL FOR KENNETH REES:</p> <p>MR. DAVID HERMAN Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street Philadelphia, Pennsylvania 19109 Phone: 215-772-7502 E-mail: jboughrum@mmwr.com</p> | <p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2-3</p> <p>4 Exhibits..... 5-9</p> <p>5 Proceedings..... 10</p> <p>6 JASON HARVISON:</p> <p>7 Examination by Mr. Ackelsberg..... 11</p> <p>8 Changes and Signature..... 268-269</p> <p>9 Reporter's Certification..... 270-271</p> |

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| <p>1 EXHIBITS (continued)</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4 Exhibit 146 Product and Operations 229 Overview 11-7-12 TF-PA 325436 - 325475</p> <p>5 Exhibits 147 - 148 (Not marked or identified.)</p> <p>6 Exhibit 149 Strengthening the Tribal 234 Model and Program Update December 20, 2012 TF-PA 369516 - 369534</p> <p>7</p> <p>8 Exhibit 150 Proposal for Compliance 245 Risk Assessment Review and Audit, Plain Green Loans, LLC, The Chippewa Cree Tribe August 22, 2012 TF-PA 572588 TF-PA 572589 - 572595</p> <p>9 Exhibit 151 CFPB Readiness Exams, Tribal 246 January 7, 2013, Preliminary Draft TF-PA 572596 - 572623</p> <p>10</p> <p>11 Exhibit 152 (Not marked or identified.)</p> <p>12</p> <p>13 Exhibit 153 Map and Legend 256 TF-PA 014425 - 014426</p> <p>14 Exhibit 154 E-mail correspondence, 9-26-13 258 Re: Ho Chunk TF-PA 257992 - 258004</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 MR. GATEWOOD: Matthew Gatewood for the Think Finance defendants.</p> <p>2 MR. HERMAN: David Herman on behalf of Kenneth E. Rees.</p> <p>3 MR. SCHEFF: Richard Scheff for Jason Harvison.</p> <p>4 THE VIDEOGRAPHER: Counsel on the phone?</p> <p>5 MR. SCHEFF: There's no -- one of the Victory Park guys, one of the clients.</p> <p>6 THE VIDEOGRAPHER: Will the court reporter please administer the oath.</p> <p>7 JASON HARVISON having been first duly sworn, testified as follows:</p> <p>8 EXAMINATION</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Good morning, Mr. Harvison.</p> <p>11 MR. SCHEFF: Hold on, we --</p> <p>12 MR. ACKELSBURG: Yeah, we're going to put on the record first.</p> <p>13 MR. GATEWOOD: The parties have conferred, and to facilitate the deposition process and to avoid multiple disruptions per question, any defendant that raises an objection; form, preserves</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| Page 10 | Page 12 |
| <p>1 THE VIDEOGRAPHER: We are now on the</p> <p>2 record for the videotaped deposition of Jason</p> <p>3 Harvison. The time is 8:53 a.m., April 17, 2018, in</p> <p>4 the matter of Commonwealth of Pennsylvania, et al.,</p> <p>5 vs. Think Finance, et al., Case No. 14-7139-JCJ,</p> <p>6 being held in the United States Eastern District of</p> <p>7 Pennsylvania.</p> <p>8 The court reporter is Christy Sievert, and</p> <p>9 the videographer is Gus Phillips. Both are</p> <p>10 representatives of Kaplan Leaman & Wolfe Court</p> <p>11 Reporters.</p> <p>12 Will counsel please state their</p> <p>13 appearances for the record.</p> <p>14 MR. ACKELSBURG: Irv Ackelsberg for</p> <p>15 the Commonwealth of Pennsylvania.</p> <p>16 MR. GROGAN: John Grogan, also for the</p> <p>17 Commonwealth.</p> <p>18 MR. MIRARCHI: Saverio Mirarchi for</p> <p>19 the Commonwealth of Pennsylvania.</p> <p>20 MR. DAUGHERTY: Andrew Daugherty on</p> <p>21 behalf of National Credit Adjusters.</p> <p>22 MR. HAWS: Matthew Haws on behalf of</p> <p>23 the Victory Park defendants.</p> <p>24 MR. SHAPIRO: Daniel Shapiro for the</p> <p>25 Victory Park defendants.</p> | <p>1 the objection with respect to all other defendants</p> <p>2 as well, and the parties have agreed on that.</p> <p>3 MR. ACKELSBURG: And I think we'll do</p> <p>4 that -- you want to do that in -- going forward in</p> <p>5 the other depositions so we won't even have to make</p> <p>6 this statement going forward, right?</p> <p>7 MR. GATEWOOD: That's right, it</p> <p>8 will -- it will apply to all depositions.</p> <p>9 MR. ACKELSBURG: Okay. Anything else</p> <p>10 anyone wants to put on the record before we begin?</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Good morning, Mr. Harvison.</p> <p>13 A. Good morning.</p> <p>14 Q. Welcome. I want to -- I'm Irv Ackelsberg,</p> <p>15 as you know, representing the Commonwealth of</p> <p>16 Pennsylvania.</p> <p>17 Before we get into the substance of the</p> <p>18 matters here, I want to -- I want to ask you a few</p> <p>19 preliminary questions. The first is whether you</p> <p>20 have been deposed before?</p> <p>21 A. Yes, I have.</p> <p>22 Q. Okay. And how many times?</p> <p>23 A. Three separate times.</p> <p>24 Q. Okay. And could you identify the three</p> <p>25 times? And if you could, roughly, when it happened,</p> |

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| <p>1 A. Early on that was the expectations.</p> <p>2 Q. Okay. And we're just talking about early</p> <p>3 on. I know there were changes made, and I -- and</p> <p>4 we'll -- promise you, we're going to -- we're going</p> <p>5 to work our way through them. But I'm just really</p> <p>6 dealing with the -- the initial -- establishing the</p> <p>7 relationships the way things were in the beginning.</p> <p>8 Okay?</p> <p>9 A. Okay.</p> <p>10 Q. With regard to application processing,</p> <p>11 well, this -- this relates to the decision engine</p> <p>12 that we talked about before; am I right?</p> <p>13 A. So, actually, I would say the decision</p> <p>14 engine piece would be one below. Application</p> <p>15 processing is --</p> <p>16 Q. Okay. That's the website?</p> <p>17 A. Yes.</p> <p>18 Q. And Think Finance was telling the tribe:</p> <p>19 We can -- we'll put together the website for you,</p> <p>20 right?</p> <p>21 A. So, actually, let me back up just real</p> <p>22 quick. So, yes, so the application processing piece</p> <p>23 would be -- you're right. I was getting confused</p> <p>24 here. It would be on the -- what the tribes wanted</p> <p>25 for the look and feel of the site, what kind of</p> | <p>1 interesting things about the Chippewa Cree tribe</p> <p>2 that we felt that they were a good partner for was</p> <p>3 they actually had an established lending operation</p> <p>4 already set up through another third-party servicer.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Meaning Encore?</p> <p>7 A. I believe that was the partner that they</p> <p>8 had.</p> <p>9 Q. Well, had they ever made a loan with</p> <p>10 Encore?</p> <p>11 A. Have I ever made?</p> <p>12 Q. No. Had the tribe ever made a loan with</p> <p>13 Encore?</p> <p>14 A. It was my understanding that they had an</p> <p>15 established platform, established site, and a</p> <p>16 portfolio that was there.</p> <p>17 Q. That wasn't my question. My question was</p> <p>18 whether they were actually making loans on that</p> <p>19 platform?</p> <p>20 MR. SCHEFF: Object to the form; asked</p> <p>21 and answered.</p> <p>22 You can answer again.</p> <p>23 A. That was my complete understanding.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. That you thought they were making loans?</p> |
| Page 122 | Page 124 |
| <p>1 creative, what kind of verbiage they wanted out</p> <p>2 there, and also any kind of communications with the</p> <p>3 customer before the application process was</p> <p>4 completed.</p> <p>5 Q. And then under "Underwriting Criteria,"</p> <p>6 then that's -- that's the decision engine, right?</p> <p>7 A. So here what would be requested -- required</p> <p>8 of the tribes would be that they would have to</p> <p>9 approve up front any kind of underwriting criteria,</p> <p>10 whether that's knockout rules, score cuts that --</p> <p>11 that they would set. And then on a go-forward basis</p> <p>12 any kind of modifications that needed to be made had</p> <p>13 to be approved and -- reviewed and approved by the</p> <p>14 tribe, and then there would also be ongoing</p> <p>15 reporting on how the portfolio performed that they</p> <p>16 would be expected to -- to review to make sure they</p> <p>17 understand the portfolio is performing.</p> <p>18 Q. Now, I mean, when you went to the Chippewa</p> <p>19 Cree, I mean, they didn't have any -- they didn't</p> <p>20 have any experience running a loan operation like</p> <p>21 you were -- like you were -- like you were offering</p> <p>22 to set up for them, had they?</p> <p>23 MR. GATEWOOD: Objection; form.</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. Sure. I mean, actually, one of the</p> | <p>1 A. (Nods head affirmatively.)</p> <p>2 Q. Okay. And so in terms of the -- the role</p> <p>3 of the tribe with regard to underwriting, the tribe</p> <p>4 had to -- the tribe had to approve any -- the</p> <p>5 development of the -- the decision engine required</p> <p>6 certain parameters that the tribe would have to --</p> <p>7 would have to agree to, right? They would have to</p> <p>8 approve certain -- whatever the particular</p> <p>9 underwriting criteria were of the platform that was</p> <p>10 set up, right?</p> <p>11 A. The tribe would have to approve anything</p> <p>12 that into the -- the underwriting.</p> <p>13 Q. Right. So Think Finance would have to</p> <p>14 develop something in order to -- there would have to</p> <p>15 then be someone saying: Yes, I approve that.</p> <p>16 Right? That's -- that's what the tribal role would</p> <p>17 be, to approve what Think Finance put in front of</p> <p>18 them, right?</p> <p>19 MR. GATEWOOD: Objection; form.</p> <p>20 A. My understanding was, and the way it</p> <p>21 actually took place, was not that they just approve</p> <p>22 anything that was sent over to them. They -- they</p> <p>23 would have to review any kind of changes that were</p> <p>24 being proposed, understand the impacts that it would</p> <p>25 have to the portfolio. And since they did own a</p> |

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| <p style="text-align: right;">Page 125</p> <p>1 piece of the portfolio, that they -- you know, they</p> <p>2 wanted to make sure that it was a prudent decision.</p> <p>3 So they -- they were the ones that had to review and</p> <p>4 approve and make any suggested modifications back to</p> <p>5 us --</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. And your --</p> <p>8 A. -- on anything.</p> <p>9 Q. And your sense was that the tribe really</p> <p>10 understood all that and they understood -- when you</p> <p>11 sent loan criteria, they understood that? I mean,</p> <p>12 were you involved in that?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 A. So most of the -- from a -- an underwriting</p> <p>15 standpoint, a lot of that conversation came from our</p> <p>16 risk department with -- with the partners. But I</p> <p>17 reviewed some of the documentation that was sent --</p> <p>18 you know, not every documentation but -- but how</p> <p>19 that structure was put together, and I thought they</p> <p>20 were very thorough on what the -- the changes were</p> <p>21 being proposed for, what the impact would be so that</p> <p>22 the tribe could really understand what was going on</p> <p>23 and ask the questions they needed to ask to get</p> <p>24 comfortable.</p> <p>25 BY MR. ACKELSBURG:</p> | <p style="text-align: right;">Page 127</p> <p>1 right?</p> <p>2 MR. SCHEFF: Objection; asked and</p> <p>3 answered.</p> <p>4 You can answer it again.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. That's -- right?</p> <p>7 A. So I would say you see many lenders out</p> <p>8 there partner with ad agencies, creative agencies to</p> <p>9 do marketing for them on behalf of their products.</p> <p>10 And so this is --</p> <p>11 Q. Understood.</p> <p>12 A. And so, just -- just as you see as in many</p> <p>13 other industries, the tribe contracted with</p> <p>14 telemarketing to do that -- that marketing, but they</p> <p>15 had to be involved with every piece of communication</p> <p>16 and creative to make sure it met their criteria.</p> <p>17 Q. I understand. And they contract with Think</p> <p>18 Finance to -- to operate the website and decision</p> <p>19 engine?</p> <p>20 A. So, I mean, once again, on the website</p> <p>21 creative, there was -- there was work done with the</p> <p>22 tribes on how to propose what that look and feel,</p> <p>23 what that language would be that the tribes had</p> <p>24 input on. Any kind of verbiage that was out there,</p> <p>25 it had to be approved upon. And then the same thing</p> |
| <p style="text-align: right;">Page 126</p> <p>1 Q. What about under "Funding and Payment</p> <p>2 Processing," that was, basically, all done by Think</p> <p>3 Finance, wasn't it?</p> <p>4 MR. GATEWOOD: Objection; form.</p> <p>5 MR. SCHEFF: Object to the form.</p> <p>6 A. So under "Funding and Payment Processing,"</p> <p>7 as -- as part of the system, the system would cue up</p> <p>8 what -- what loans needed to be funded that night,</p> <p>9 what loans needed to take payments out of.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Whose system?</p> <p>12 A. The loan management system that was</p> <p>13 licensed by the tribe. So based on loans that they</p> <p>14 had originated, the system would cue up any kind of</p> <p>15 outgoing credits or incoming debits, but those</p> <p>16 were -- would all be going into a tribal account</p> <p>17 that they owned.</p> <p>18 Q. That would all be managed by Think Finance,</p> <p>19 right?</p> <p>20 A. That was the tribe's product that they</p> <p>21 were -- I don't understand what you're saying.</p> <p>22 Q. Well, I'm just trying to understand who's</p> <p>23 doing what here. So let's go to the top -- from the</p> <p>24 top. The tribe -- the marketing is done by Think,</p> <p>25 but the tribe has to approve it before it goes out,</p> | <p style="text-align: right;">Page 128</p> <p>1 with the underwriting criteria, as I mentioned</p> <p>2 earlier, that was something that it was their</p> <p>3 underwriting criteria, they -- they set that</p> <p>4 criterion up front when the program was established.</p> <p>5 Any changes that were proposed, they approved or</p> <p>6 made modifications to.</p> <p>7 And the other thing they had -- they had</p> <p>8 access to was at the end of the day, the -- the</p> <p>9 decision engine that underwrote the loans based on</p> <p>10 their criteria, it would say these are the loans</p> <p>11 that met your criteria and these are the loans that</p> <p>12 did not meet your criteria and so it had to be</p> <p>13 declined, and they had the ability to go in and</p> <p>14 review any and all of those to audit and sample and</p> <p>15 make sure it met their criteria.</p> <p>16 Q. Well, they had the ability, but they</p> <p>17 didn't -- they didn't really have to do it in order</p> <p>18 for the loans to be either approved or denied,</p> <p>19 right?</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 MR. GATEWOOD: Objection; form.</p> <p>22 A. So to me, that's -- that's what I would</p> <p>23 call a belts and suspenders approach. They had</p> <p>24 already set up the criteria up front. They had</p> <p>25 already made approvals on any changes that were made</p> |

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| <p style="text-align: right;">Page 133</p> <p>1 with that -- that were -- were a part of the deal</p> <p>2 structure.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Now, generally, in the sales presentations,</p> <p>5 would -- would Think mention Victory Park by name or</p> <p>6 just mention that we have an investor?</p> <p>7 MR. GATEWOOD: Objection; form.</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. Going off memory, which is a long time ago,</p> <p>10 my -- my memory was that there was an investor there</p> <p>11 to purchase receivables but not talk about them</p> <p>12 specifically.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Let's look at another dec -- I'm sorry --</p> <p>15 another report, a Rees report to the board</p> <p>16 January 21, 2011.</p> <p>17 (Exhibit No. 123 marked.)</p> <p>18 MR. SHAPIRO: Is this 123?</p> <p>19 MR. ACKELSBURG: Yes.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. So if you turn to the discussion in this --</p> <p>22 in this board report, the report concerning "Think</p> <p>23 Cash/Great Plains Lending." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. So, again, the date of this is</p> | <p style="text-align: right;">Page 135</p> <p>1 about -- was this about an IPO?</p> <p>2 MR. GATEWOOD: Objection; form.</p> <p>3 A. So my recollection on this was, from time</p> <p>4 to time, investment bankers would come in and talk</p> <p>5 to us about the potential for an IPO, and Ken had --</p> <p>6 had talked to one of those investors about some of</p> <p>7 the products we were looking to take to market.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. And so when Ken says they were surprisingly</p> <p>10 nonplussed about the model, do you know why --</p> <p>11 what's the reason for the surprise?</p> <p>12 A. No, I don't.</p> <p>13 Q. Okay. The last -- on page 4, I'm sorry,</p> <p>14 it's the -- the last item going forward, TF-PA</p> <p>15 411042, the last bullet item is, "Complete the</p> <p>16 automation of the debt sales process." That's what</p> <p>17 we were talking about before, right, the</p> <p>18 arrangements with -- with Bret Horrocks?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 You can answer the question if you can.</p> <p>21 A. Yeah, so what I would say that's more</p> <p>22 around we would talk with the third-party debt</p> <p>23 buyers. I mean, Brett Horrocks was a consultant.</p> <p>24 So that was completing the automations from the</p> <p>25 lender and the debt buyer.</p> |
| <p style="text-align: right;">Page 134</p> <p>1 January 21st, 2011. And from the second paragraph,</p> <p>2 it's -- it's clear that at this point in time, it</p> <p>3 was still assumed that the company was going to</p> <p>4 be -- that the -- that the ThinkCash migration was</p> <p>5 going to be the Otoe-Missouria tribe, correct?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. So at this point, we were looking for</p> <p>8 Otoe-Missouria to still be the first tribe we</p> <p>9 launched with.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Right. And they -- and the expectation was</p> <p>12 the first tribe would be the ones that would get the</p> <p>13 returning customers from ThinkCash, right?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. So the first tribe had the ability to</p> <p>16 market to the ThinkCash customers.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Yeah. Okay. Now, in the -- in the last</p> <p>19 paragraph, it says, "Because of the concerns about</p> <p>20 the potential impact on valuation due to the tribal</p> <p>21 deal," and then it says that the Great Plains</p> <p>22 lending concept was discussed with some investment</p> <p>23 bankers. Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Okay. So what's going on here? Was this</p> | <p style="text-align: right;">Page 136</p> <p>1 BY MR. ACKELSBURG:</p> <p>2 Q. Now, I've noticed in -- in some of the</p> <p>3 documents that with regard to the Otoe-Missouria,</p> <p>4 there's reference to a group called The MacFarlane</p> <p>5 Group. Do you remember them and someone named Mark</p> <p>6 Curry?</p> <p>7 A. I do.</p> <p>8 Q. Okay. So what was the connection between</p> <p>9 MacFarlane and Curry and the discussions about</p> <p>10 whether or not to proceed with the Great Plains</p> <p>11 Lending project with Otoe-Missouria?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. So my recollection on that was Mark Curry</p> <p>14 is an individual that had been in the space. We had</p> <p>15 met him at conferences and things like that before.</p> <p>16 Not -- not just tribal lending but other lending</p> <p>17 ventures.</p> <p>18 He had -- or one of his entities has</p> <p>19 worked as a service provider to the Otoe-Missouria</p> <p>20 tribe to launch American Web Loan. They had a</p> <p>21 single pay product out there.</p> <p>22 THE REPORTER: I'm sorry, American</p> <p>23 what?</p> <p>24 THE WITNESS: American Web Loan.</p> <p>25 A. And that when we started to research the</p> |

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| <p style="text-align: right;">Page 137</p> <p>1 tribal lending model, I believe -- I believe it was</p> <p>2 Ken that reached out to him to talk about a</p> <p>3 potential partnership. And the Otoe-Missouria tribe</p> <p>4 was looking to expand out past just the payday -- or</p> <p>5 single pay product and wanted to go into installment</p> <p>6 lending. So that's where the conversations began.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. You mentioned a few times this idea of a</p> <p>9 single pay product. So when you -- when you use</p> <p>10 that term, you're referring to traditional payday</p> <p>11 lending, right?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 You can answer the question.</p> <p>14 A. Sometimes referred to as "payday." We</p> <p>15 refer to as "single pay."</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Okay. Meaning that the borrower takes a</p> <p>18 loan out for, let's say, two weeks and then after</p> <p>19 two weeks, everything is due, the borrower can</p> <p>20 either pay that or roll over for some additional</p> <p>21 period of time, right? That's the single pay model,</p> <p>22 right?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 You can answer the question.</p> <p>25 A. A single pay model typically works under</p> | <p style="text-align: right;">Page 139</p> <p>1 set up and were looking to expand their product</p> <p>2 offerings, and we were somebody they were talking to</p> <p>3 about that.</p> <p>4 MR. ACKELSBURG: Now, let me show you</p> <p>5 one more document. This is P-124.</p> <p>6 (Exhibit No. 124 marked.)</p> <p>7 A. (Reviews document.)</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. All right. So first off, do you -- do you</p> <p>10 remember this -- this e-mail that Ken sent around</p> <p>11 in -- on February 24th, 2011, saying that, "We</p> <p>12 finally got the signed agreement for the tribe.</p> <p>13 Gentlemen, start your engines"? Do you remember</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And what did -- how did you take</p> <p>17 that start -- what was your understanding of "let's</p> <p>18 start your engines" meant?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 A. Sure. I mean, I go back to -- you know, we</p> <p>21 had gone through over the last, call it, five months</p> <p>22 of the -- the termination of our bank partner</p> <p>23 relationships, exploring new different partnerships</p> <p>24 and channels to go into, a lot of work had gone into</p> <p>25 the last 90 to 120 days to -- to explore some</p> |
| <p style="text-align: right;">Page 138</p> <p>1 that construct or some variation of it.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Yeah. Okay. And the idea with an</p> <p>4 installment loan product is that the consumer is</p> <p>5 taking -- is taking a loan out for a -- for a longer</p> <p>6 period of time than two weeks, right?</p> <p>7 MR. SCHEFF: Object to the form.</p> <p>8 A. So, typically, with an installment product,</p> <p>9 what we had seen in our research, it had higher</p> <p>10 satisfaction scores. And, like I said, from a</p> <p>11 contract standpoint, there was a longer term product</p> <p>12 with fixed payments that amortized over -- over that</p> <p>13 term and gave -- just gave more consumer flexibility</p> <p>14 than a single pay product.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. And so as I understand it, the -- the</p> <p>17 Otoe-Missouria was already doing a single pay</p> <p>18 product through Mark Curry, and they were interested</p> <p>19 in considering an installment loan product through</p> <p>20 Think Finance? That's what -- that's what was</p> <p>21 happening at that time?</p> <p>22 MR. GATEWOOD: Objection; form.</p> <p>23 A. So the way I would say it is that, yes,</p> <p>24 Otoe-Missouria had a service provider relationship</p> <p>25 already set up. They were the lender, had a program</p> | <p style="text-align: right;">Page 140</p> <p>1 different options. The first tribal partnership had</p> <p>2 been signed. And so just because the deal was</p> <p>3 signed, it didn't mean the work was done yet. There</p> <p>4 was a lot of work to be done to get that ready to</p> <p>5 launch. And so it was -- it's kind of a celebration</p> <p>6 of we signed our first deal, let's -- let's be</p> <p>7 excited about that and get going.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Well, and then attached is that -- is that</p> <p>10 signed agreement that he was saying he had gotten</p> <p>11 back, right? Do you see the -- and the agreement is</p> <p>12 the trademark and URL assignment agreement, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And am I correct that the URL for Great</p> <p>15 Plains Lending was already owned by -- by TailWind</p> <p>16 at the time?</p> <p>17 A. So I'll go back to what I said earlier this</p> <p>18 morning was, that when we decided to explore the</p> <p>19 path of a different lending model, we made an</p> <p>20 investment on some work that we didn't know if it</p> <p>21 would come to fruition or not. And so by doing some</p> <p>22 of the IT work while we were doing the legal</p> <p>23 research and procuring a name and a domain, a</p> <p>24 website domain was part of that process. We didn't</p> <p>25 know if it was going to be able to be used or not.</p> |

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| <p>1 But we found the name Great Plains Lending, we</p> <p>2 secured it, and we were able to transfer that other</p> <p>3 to the first partner.</p> <p>4 Q. And, basically, what this agreement meant</p> <p>5 was that the Otoe-Missouria tribe was agreeing to be</p> <p>6 the tribal lender behind that product, Great Plains</p> <p>7 Lending, that you had designed, right?</p> <p>8 MR. GATEWOOD: Objection; form.</p> <p>9 MR. SCHEFF: Object to the form; the</p> <p>10 document speaks for itself.</p> <p>11 You can answer the question if you can.</p> <p>12 A. That's the way I read it, yes.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Okay. And the agreement -- this agreement</p> <p>15 in February was between TailWind Marketing and Great</p> <p>16 Plains Lending, Incorporated, right?</p> <p>17 A. That's correct.</p> <p>18 Q. I found in -- let me just give you this</p> <p>19 document and see if you can illuminate us on what it</p> <p>20 is.</p> <p>21 MR. ACKELSBURG: This is 125.</p> <p>22 (Exhibit No. 125 marked.)</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. I think some of the copies are front and</p> <p>25 back. So you see this is part of the Think Finance</p> | <p>1 the contracting entity on the tribal side would be?</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 MR. GATEWOOD: Objection; form.</p> <p>4 A. I don't.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. No. Okay.</p> <p>7 MR. ACKELSBURG: I think we'll do one</p> <p>8 more exhibit, and then this will be a good time for</p> <p>9 a break.</p> <p>10 MR. SCHEFF: They're bringing in lunch</p> <p>11 at 12:30.</p> <p>12 MR. ACKELSBURG: Oh, okay.</p> <p>13 MR. SCHEFF: So, again, break whenever</p> <p>14 you want to break, but lunch will be here around</p> <p>15 12:30.</p> <p>16 (Exhibit No. 126 marked.)</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Now, I am right that in the sales</p> <p>19 discussions with the tribes, the first step would</p> <p>20 have -- would have generally been a nondisclosure</p> <p>21 agreement?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. That's correct.</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. Okay. And so what we see here is a</p> |
| Page 142 | Page 144 |
| <p>1 production, you see from the lower right-hand</p> <p>2 corner.</p> <p>3 A. Uh-huh (affirmative response).</p> <p>4 Q. And this appears to be a resolution</p> <p>5 establishing where the tribe -- the Otoe-Missouria</p> <p>6 tribe established an entity called Great Plains</p> <p>7 Lending, LLC, several months later. Do you see</p> <p>8 that?</p> <p>9 A. I do.</p> <p>10 Q. Okay. Do you remember -- so let's take</p> <p>11 this -- let's take this in steps. So the last</p> <p>12 document, February -- in late February 2011, Ken</p> <p>13 Rees gets back the signed trademark and URL</p> <p>14 assignment agreement, and it's -- and it's with an</p> <p>15 entity called Great Plains Lending, Incorporated,</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. All right. Now, ultimately, the agreements</p> <p>19 that -- that were signed that set up the Great</p> <p>20 Plains Lending operation, the actual -- the actual</p> <p>21 product operation, those agreements were all with an</p> <p>22 entity, I'll represent to you was Plain Green</p> <p>23 Lending, LLC, as opposed to Plain Green Lending,</p> <p>24 Incorporated. Do you remember anything in the delay</p> <p>25 being connected to confusion about what the -- what</p> | <p>1 nondisclosure agreement dated February 28th, 2011,</p> <p>2 right? And this is with the Chippewa Cree?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. So this would then roughly situate</p> <p>5 the beginnings of the substantive discussions with</p> <p>6 the -- situate in time the substantive discussions</p> <p>7 with the Chippewa Cree; am I right?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. I believe so, yes.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Okay. What do you recall -- and I -- let</p> <p>12 me refer you back to the -- to that timeline, the</p> <p>13 tribal timeline we looked at where -- where the</p> <p>14 slide described a shift to a different tribe.</p> <p>15 So you have February 24th, 2011, Ken Rees</p> <p>16 is saying: We've got back the first agreement,</p> <p>17 start your engines, gentlemen, and four days later</p> <p>18 there's a -- there's a nondisclosure agreement with</p> <p>19 the Chippewa Cree. Now, what can you tell us about</p> <p>20 the shift from the focus on the Otoe-Missouria to</p> <p>21 the shift -- to the shift to the Chippewa Cree?</p> <p>22 MR. GATEWOOD: Objection; form.</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 A. So it was always the intent once we decided</p> <p>25 to go down to partner with different tribes to have,</p> |

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| <p style="text-align: right;">Page 145</p> <p>1 you know, multiple programs out to market, similar</p> <p>2 like we did -- similar -- similar to we did with</p> <p>3 bank partners. And so even though we had already</p> <p>4 been talking with the Otoe-Missouria tribe, we were</p> <p>5 out trying to find other potential partners that we</p> <p>6 could engage with, and this was the next one we were</p> <p>7 introduced to.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Okay. So just the mere fact that there is</p> <p>10 a nondisclosure agreement doesn't -- doesn't</p> <p>11 indicate to you there was anything -- anything awry</p> <p>12 with the -- with the Otoe-Missouria, it's just this</p> <p>13 was just another tribe that you had -- that you were</p> <p>14 exploring possibilities with?</p> <p>15 MR. SCHEFF: Object to the form.</p> <p>16 A. I believe so.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay. But you do recall that something</p> <p>19 happened with Great Plains, and the -- and the</p> <p>20 ThinkCash customer base ended up with Plain Green</p> <p>21 rather than Great Plains, right? You remember that</p> <p>22 happening, right?</p> <p>23 MR. SCHEFF: Object to the form.</p> <p>24 A. So I do remember there was -- there was a</p> <p>25 delay in getting the Otoe-Missouria partnership</p> | <p style="text-align: right;">Page 147</p> <p>1 MR. SCHEFF: Object to the form.</p> <p>2 A. So I believe the introduction was made as</p> <p>3 we were working with an attorney who had a partner</p> <p>4 that was working -- had a partner within his firm</p> <p>5 that was working with Steve Haynes and knew that we</p> <p>6 were exploring potential tribal relationships. And</p> <p>7 they knew that Steve had previously done work in</p> <p>8 Indian country on the gaming side and knew many of</p> <p>9 the tribes very well and could help make some</p> <p>10 introductions for us.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. And so after learning that from that</p> <p>13 attorney, what happened next?</p> <p>14 A. There was an introduction made to Steve</p> <p>15 Haynes. We gave him an overview of what we were</p> <p>16 looking --</p> <p>17 Q. Well, slow down. Who's the "we"?</p> <p>18 A. I believe it would have been -- the first</p> <p>19 conversation would have been probably myself and</p> <p>20 Steve Schafer with -- with Steve Haynes.</p> <p>21 Q. Okay.</p> <p>22 A. And so we gave Steve an overview of what we</p> <p>23 were looking to do by partnering with tribes, and he</p> <p>24 felt like he had potential partners that could be</p> <p>25 interesting for us to speak with. And so we</p> |
| <p style="text-align: right;">Page 146</p> <p>1 live. And right now I can't remember exactly what</p> <p>2 the -- the big piece of that, what caused that</p> <p>3 delay. And so -- but once it started to slow down</p> <p>4 and we had already identified -- the Chippewa Cree,</p> <p>5 as I mentioned earlier, already had a lending</p> <p>6 product to market, and they were -- they were</p> <p>7 interested in moving forward pretty quickly, we</p> <p>8 decided to move forward with Plain Green first.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Now, with regard to Great Plains Lending,</p> <p>11 what you told us is that you had this -- this</p> <p>12 contact in the industry, someone you knew, Mark</p> <p>13 Curry, who made the connection with the tribe, that</p> <p>14 they might be interested in expanding from a single</p> <p>15 payment to an installment loan, right?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. What was your contact with the</p> <p>18 Chippewa Cree? How did you -- how did you make that</p> <p>19 connection?</p> <p>20 A. Yeah, we were introduced -- we were</p> <p>21 introduced to the Chippewa Cree through a gentleman</p> <p>22 named Steve Haynes.</p> <p>23 Q. And how -- how did you or the company know</p> <p>24 Steve Haynes? What's -- what was your connection to</p> <p>25 Steve Haynes?</p> | <p style="text-align: right;">Page 148</p> <p>1 negotiated a consulting agreement with him for him</p> <p>2 to help introduce us to tribes.</p> <p>3 Q. And so what happened next?</p> <p>4 A. Steve made an introduction to the Chippewa</p> <p>5 Cree. He felt like they would be a good partnership</p> <p>6 because of what I mentioned earlier, they -- they</p> <p>7 were already in the lending business. They were</p> <p>8 looking to expand that operation. He felt like</p> <p>9 because of their -- their -- their exposure already</p> <p>10 into service provided lending and in the lending</p> <p>11 space, that they would -- they would be of interest,</p> <p>12 and he made the introduction for us.</p> <p>13 Q. Now, when you say that the Chippewa Cree</p> <p>14 was already in the lending business, would that have</p> <p>15 been based on what Steve Haynes told you?</p> <p>16 A. So, initially, it was what Steve Haynes</p> <p>17 told us, but then also in conversations with members</p> <p>18 up on the reservation, they also talked to us about</p> <p>19 the programs they already had in market.</p> <p>20 Q. And did Steve Haynes, in the -- before you</p> <p>21 went to the tribe, did Steve Haynes mention anything</p> <p>22 about -- about a company named Encore Services?</p> <p>23 A. No, he didn't.</p> <p>24 Q. Okay. So before you went out to the</p> <p>25 Chippewa Cree, did you have any idea of -- of the</p> |

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| <p style="text-align: right;">Page 169</p> <p>1 A. I remember calling it just our loan 2 management system, but at some point it became our 3 Legacy system because it became somewhat dated 4 versus the newer systems we put in place. 5 Q. Okay. So if we use the term -- if the term 6 "Legacy" comes up, "Legacy platform," that probably 7 refers to the installment loan platform as opposed 8 to the line of credit platform? 9 MR. SCHEFF: Object to the form. 10 A. Okay. 11 BY MR. ACKELSBURG: 12 Q. Is that -- is that okay? Is that true? 13 A. Yes. 14 Q. Okay. And how did the company refer to the 15 platform that operated the line of credit product 16 called Mobiloans? 17 A. We refer to that underlying platform as the 18 CoreCard platform. 19 Q. Okay. I've also seen reference to 20 something called Roadrunner. Do you know what that 21 is? 22 A. I don't remember that name. 23 Q. Okay. So just so that I have it straight, 24 CoreCard is the loan platform for Mobiloans. The 25 Legacy platform, or the LMS, would be the</p> | <p style="text-align: right;">Page 171</p> <p>1 underneath me just yet. 2 Q. What -- you had -- as I understand it, you 3 were vice president for products, right? 4 A. Correct. 5 Q. And so what was -- what did that entail? 6 A. As I mentioned earlier, it was mainly 7 around product design, user experience, customer 8 communications, the customer service and the 9 operations role side of things, and then working 10 with the IT teams to get those products developed 11 and working with the external partners to make sure 12 we can meet the needs that they had as well. 13 Q. Okay. But as the product vice president 14 and as a member of the board, you understand what 15 Ken Rees is saying here when he says that Plain 16 Green has a bit higher APR -- I'm sorry -- Great 17 Plains Lending has a -- has a bit higher APR than 18 the Plain Green product and that Think will be 19 targeting affiliate and lead gen traffic as Great 20 Plains Lending's primary marketing channel; you know 21 what he's -- what he's saying there, don't you? You 22 understand that? 23 MR. SCHEFF: Object to the form. 24 MR. GATEWOOD: Objection; form. 25 BY MR. ACKELSBURG:</p> |
| <p style="text-align: right;">Page 170</p> <p>1 installment loan platform? 2 A. Correct. 3 Q. Okay. 4 MR. ACKELSBURG: I show you another 5 memo by Ken Rees to the board. This one is from 6 August of 2011, August 14, 2011, that I am going to 7 identify as Plaintiff's Exhibit 139. 8 (Exhibit No. 139 marked.) 9 BY MR. ACKELSBURG: 10 Q. All right. Turning on this report -- this 11 memo to the board, turning to the discussion on the 12 second page of what's referred to as "Think 13 Cash/Great Plains Lending/Plain Green Loans," in the 14 second sentence, referencing Great Plains Lending, 15 Mr. Rees says that, "This product," meaning Great 16 Plains Lending, "has a bit higher APR, and we will 17 be targeting affiliate and lead gen traffic as its 18 primary marketing channels." Do you see that? 19 A. I do. 20 Q. Okay. Now, could you explain what he's 21 referring to? Now, you are, at this point in time, 22 overseeing the marketing teams, right? That was 23 part of what you were doing as the -- the chief 24 product officer, right? 25 A. In 2011, I didn't have the marketing team</p> | <p style="text-align: right;">Page 172</p> <p>1 Q. Do you understand that? 2 MR. SCHEFF: Object to the form. 3 A. So I can't speak to exactly what his 4 thought process was. I can speak to what -- how I 5 understood it to read. 6 BY MR. ACKELSBURG: 7 Q. Sure. Why don't you do that? 8 A. What I remember is the way we set up the 9 Great Plains program for the Otoe-Missouria tribe is 10 they put a product structure together that had a 11 slightly higher price point from an APR perspective 12 as compared to the Plain Green product. And so what 13 that allowed them to do is actually to be able to go 14 out and market or -- or partner with us to market 15 the product through other channels that might have 16 traffic that defaulted at a slightly higher rate. 17 And because it was priced a little bit higher, 18 there's a little bit more appetite for risk that 19 they could take from a default perspective. 20 Q. When -- when Mr. Rees says here that, "We 21 will be targeting affiliate and lead gen traffic," 22 he's referring to Think Finance there, is he not? 23 MR. GATEWOOD: Objection; form. 24 MR. SCHEFF: Object to the form. 25 A. As I mentioned, the way I read that is</p> |

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| <p style="text-align: right;">Page 173</p> <p>1 because the program was set up with Great Plains to</p> <p>2 have that structure, they were -- they had a</p> <p>3 different threshold for risk tolerance to go out and</p> <p>4 allow us to go market into channels that a company</p> <p>5 like Plain Green might not be comfortable marketing</p> <p>6 in.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. And so is it your testimony that -- I mean,</p> <p>9 did Plain Green -- is it your testimony that Great</p> <p>10 Plains Lending understood that it was receiving</p> <p>11 lower quality customer traffic than Great -- than</p> <p>12 Plain Green was?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 A. As -- as I talked about earlier in the day,</p> <p>16 when we set up the programs for Great Plains, one,</p> <p>17 they design what the product structure would look</p> <p>18 like and set the pricing targets, and we can go back</p> <p>19 and compare on the pricing for Great Plains is set</p> <p>20 higher than what Plain Green's was set at.</p> <p>21 The Otoe-Missouria tribe had already been</p> <p>22 using channels like affiliate and lead gen for their</p> <p>23 current existing products and were comfortable with</p> <p>24 going into that traffic or those channels for that</p> <p>25 traffic. And so when the product was designed, that</p> | <p style="text-align: right;">Page 175</p> <p>1 Yeah, I'm -- I'm still trying to get an</p> <p>2 answer to the question I asked, which was, did Think</p> <p>3 Finance inform Great Plains Lending that it was</p> <p>4 getting lower quality marketing traffic than the</p> <p>5 Plain Green product?</p> <p>6 MR. GATEWOOD: Objection; form.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Did they or didn't they?</p> <p>9 MR. SCHEFF: Object to the form; asked</p> <p>10 and answered.</p> <p>11 You can answer it again.</p> <p>12 A. So as I said, going into the product, the</p> <p>13 Great Plains Lending arrangement was so that they</p> <p>14 could have a broader array -- array of channels to</p> <p>15 go into. So they -- as I mentioned, they've already</p> <p>16 been in these channels. They were comfortable in</p> <p>17 those channels. And as the product was designed,</p> <p>18 they were -- had full intent to go into those</p> <p>19 channels. So they -- they were marketed there</p> <p>20 because of their comfort with those -- those areas</p> <p>21 to go into.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. What's your understanding of Mr. Rees's --</p> <p>24 the phrase that, "The increased interest rate will</p> <p>25 help us keep our fund rates at target levels"? Do</p> |
| <p style="text-align: right;">Page 174</p> <p>1 was the intent, to go into some of these channels</p> <p>2 that in this past either Think Finance directly or</p> <p>3 Think Finance with some of the other partners hadn't</p> <p>4 marketed into before.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Yeah, but that wasn't my question. My</p> <p>7 question was whether Think Finance told Great Plains</p> <p>8 that the higher quality traffic was going to be</p> <p>9 routed to Plain Green?</p> <p>10 MR. GATEWOOD: Objection; form.</p> <p>11 A. So I wouldn't say that the higher quality</p> <p>12 traffic was being routed to -- to Plain Green. As I</p> <p>13 mentioned, Otoe-Missouria, with their existing</p> <p>14 product, had already been in a variety of channels.</p> <p>15 These were two channels they had already been in in</p> <p>16 addition to search and direct mail, as -- as other</p> <p>17 channels. And so when they set this product up from</p> <p>18 the beginning, the full intent was to use a broader</p> <p>19 suite of channels to market into with the</p> <p>20 understanding that you could have some channels that</p> <p>21 performed differently from other channels.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. And you're saying this was -- well, strike</p> <p>24 that. I'll -- let's move on to the next -- the next</p> <p>25 question.</p> | <p style="text-align: right;">Page 176</p> <p>1 you see that?</p> <p>2 MR. GATEWOOD: Objection; form.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. What's your understanding of that?</p> <p>5 A. I do see that. So the way I read that is</p> <p>6 because of a product having a higher APR, it has a</p> <p>7 higher yield sitting there, and so the lender is</p> <p>8 able to keep a fund rated at a certain level and buy</p> <p>9 into other channels that might have a little bit</p> <p>10 higher loss rate. So their -- their fund rate stays</p> <p>11 the same, but because it has a little bit higher</p> <p>12 price point, they can take on higher losses if they</p> <p>13 need to to make that channel work for them.</p> <p>14 Q. Okay. The last paragraph states, "In</p> <p>15 addition, we are trying to accelerate the creation</p> <p>16 and lobbying efforts of the Native American Lending</p> <p>17 Association. Getting all of the tribes on the same</p> <p>18 page about the mission membership and activities of</p> <p>19 the association has been a challenge, but I am</p> <p>20 optimistic that it will be operational this quarter.</p> <p>21 We anticipate using it to publicize the virtues of</p> <p>22 tribal lending to develop and maintain best</p> <p>23 practices and to lobby against any potential</p> <p>24 legislation that might impact the products."</p> <p>25 What -- my question is, what do you</p> |

| Page 237 | Page 239 |
|--|---|
| <p>1 A. So --</p> <p>2 BY MR. ACKELSBERG:</p> <p>3 Q. Am I right? Please answer that --</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 BY MR. ACKELSBERG:</p> <p>6 Q. Please answer that question first.</p> <p>7 MR. SCHEFF: You can answer -- answer</p> <p>8 it as you choose.</p> <p>9 A. Sure. So one of the things we want to do</p> <p>10 is look at the program from all aspects and make</p> <p>11 sure that -- make sure that it was as solid as</p> <p>12 poss- -- as possible. Once again, as I said, as</p> <p>13 programs grow to the size, you want to make sure</p> <p>14 that from time to time you take a step back and make</p> <p>15 sure that they've been set up and are running in the</p> <p>16 most efficient manners.</p> <p>17 BY MR. ACKELSBERG:</p> <p>18 Q. Well, why don't you turn to page 5 of this</p> <p>19 presentation that -- that you prepared. And now --</p> <p>20 and on the slide entitled, "Simple Changes to</p> <p>21 Mitigate True Lender Claims," the first thing you</p> <p>22 came up with was is an experienced CEO, right? And</p> <p>23 you're referring -- you're not referring to</p> <p>24 Mr. Rees there, you're referring to at the tribe</p> <p>25 level, right?</p> | <p>1 kind of order of importance.</p> <p>2 Q. Well, that's because the -- there were --</p> <p>3 as of this point in time, the tribes did not have an</p> <p>4 experienced CEO, correct?</p> <p>5 MR. GATEWOOD: Objection; form.</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. I think each tribe is at a different level</p> <p>8 of what kind of experience they have within the</p> <p>9 lending programs to manage their business.</p> <p>10 BY MR. ACKELSBERG:</p> <p>11 Q. And how would you rank them, the three --</p> <p>12 the three tribes in terms of their level of</p> <p>13 sophistication with regard to the programs?</p> <p>14 MR. SCHEFF: As of December 20, 2012?</p> <p>15 MR. ACKELSBERG: Yes.</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. Sure. I think all three had made</p> <p>18 significant progress in building out their -- their</p> <p>19 internal business and operations. You know, I mean,</p> <p>20 to rank them, I don't -- I don't know that -- I</p> <p>21 don't know what kind of system you want to use to</p> <p>22 rank them on, but I think they all -- like I said, I</p> <p>23 think they all had grown from an experience level,</p> <p>24 grown from an understanding of the portfolios on --</p> <p>25 on building out their teams.</p> |
| Page 238 | Page 240 |
| <p>1 MR. GATEWOOD: Objection; form.</p> <p>2 A. So as I mentioned, this -- this was a</p> <p>3 brainstorming exercise of things that could be done</p> <p>4 to help make improvement, and it wasn't -- it wasn't</p> <p>5 specific to any one tribe but just the thought</p> <p>6 process of how we could make things --</p> <p>7 BY MR. ACKELSBERG:</p> <p>8 Q. Right.</p> <p>9 A. -- improved.</p> <p>10 Q. Including have the tribes actually hire an</p> <p>11 experienced CEO. That was the first -- that was the</p> <p>12 first thing that came out of the brainstorm, right?</p> <p>13 MR. SCHEFF: Object to the form.</p> <p>14 MR. GATEWOOD: Objection; form.</p> <p>15 A. I won't say that these were listed in any</p> <p>16 particular order of --</p> <p>17 BY MR. ACKELSBERG:</p> <p>18 Q. I'm sorry. The first one you listed,</p> <p>19 though, in --</p> <p>20 MR. SCHEFF: Don't interrupt his</p> <p>21 answer, please.</p> <p>22 BY MR. ACKELSBERG:</p> <p>23 Q. -- in this slide.</p> <p>24 A. So the first one mentioned within the</p> <p>25 presentation. But, like I said, they weren't in any</p> | <p>1 But you look at the size of these</p> <p>2 business -- it's kind of, like, when you look at a</p> <p>3 start-up, a start-up that has -- when we were PayDay</p> <p>4 One and had five or ten people starting it up, that</p> <p>5 program evolves and matures and you bring in</p> <p>6 leadership as you get a more complex and more</p> <p>7 sizable organization. And as we looked and took a</p> <p>8 step back and said where are these programs going,</p> <p>9 you know, let's make sure they have -- let's make</p> <p>10 sure we can talk to them about what could help them</p> <p>11 to be as successful -- as successful as possible.</p> <p>12 BY MR. ACKELSBERG:</p> <p>13 Q. I understand. But at this point in time</p> <p>14 you were preparing this, you weren't talking</p> <p>15 about -- about one of the three tribes, you were</p> <p>16 talking about the tribes collectively with regard to</p> <p>17 this slide, were -- were you not?</p> <p>18 MR. GATEWOOD: Objection; form.</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 A. Yes.</p> <p>21 BY MR. ACKELSBERG:</p> <p>22 Q. Okay. And so, collectively, you thought it</p> <p>23 would be a good idea to strengthen the tribal model</p> <p>24 by having the tribes hire an experienced CEO, an</p> <p>25 accountant controller that was a CPA, an experienced</p> |

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| <p style="text-align: right;">Page 241</p> <p>1 compliance vendor management executive, and an 2 experienced risk management executive, correct? 3 MR. GATEWOOD: Objection; form. 4 MR. SCHEFF: Object to the form. 5 BY MR. ACKELSBURG: 6 Q. That was your suggestion in this -- in 7 this -- in this presentation, right? 8 MR. SCHEFF: Object to the form. 9 A. So as I mentioned, as you -- as you look 10 and evaluate programs that mature to their level, 11 you're going to want to build out and have 12 specific -- one person might be able to do many 13 trades at one size, and then you've got to 14 specialize as it continues to grow. And so all of 15 three of these programs have become fairly sizable, 16 and our recommendation was that they go ahead and 17 build out this expertise or broaden it from what 18 they had before. 19 BY MR. ACKELSBURG: 20 Q. And another recommendation you had was to 21 actually establish a tribal credit committee and 22 documentation for the tribal credit committee, 23 right? 24 MR. GATEWOOD: Objection; form. 25 MR. SCHEFF: Object to the form.</p> | <p style="text-align: right;">Page 243</p> <p>1 eliminate any kind of confusion that was out there. 2 Q. Are you -- are you saying that the idea to 3 shift from 4 percent revenue share to a percent 4 profit share was the tribe's idea? 5 MR. SCHEFF: Object to the form. 6 A. So that's not what I was saying, but I -- 7 BY MR. ACKELSBURG: 8 Q. Oh, okay. 9 A. But what I was saying is -- 10 Q. I thought that's what you said. 11 MR. SCHEFF: Object to the form. Let 12 him finish his answer. 13 A. What I did say is that there was confusion 14 from the tribes when I was meeting with some of the 15 council members, not the entire tribes or the actual 16 lenders, but when I would meet with the council 17 members of trying to understand the difference 18 between a revenue share versus a profit share. And 19 so we wanted to create a vehicle to where they could 20 look at either one of those numbers and feel 21 comfortable with it. 22 BY MR. ACKELSBURG: 23 Q. And another idea you had for improving the 24 optics would be to have no automatic end-of-day 25 funding, to actually require daily tribal review</p> |
| <p style="text-align: right;">Page 242</p> <p>1 A. So, yes, that was one of the 2 recommendations. 3 BY MR. ACKELSBURG: 4 Q. Now, under -- under "Improve Optics," why 5 was optics important? 6 A. So from -- the way this was presented -- 7 and this also came out of some of the conversations 8 even meeting with tribal council, is when you talk 9 about a rev share, that is off -- that is off the 10 top line. That has no expenses, whether that's 11 losses, marketing expense, operational expenses. 12 It's right off the top, which -- which is a number 13 that doesn't have to be watered down. 14 But a small number of revenue versus a 15 bigger number of profit can actually be the same 16 thing. It's just there's more -- there's more items 17 that as you go through a P&L statement that are 18 taken out before you get to the net profit. 19 And so one thing we were looking at is -- 20 because some of the partners would -- would get 21 confused on we want a piece of the profits, not of 22 the revenue. And so we -- we discussed can we 23 create a revenue stream that could either be a 24 revenue share from the top of the funnel or a piece 25 of the profit so that we can -- we can help</p> | <p style="text-align: right;">Page 244</p> <p>1 prior to funding of loans, correct? That was 2 another one of your ideas? 3 MR. SCHEFF: Object to the form. 4 MR. GATEWOOD: Objection; form. 5 A. So as I mentioned before, and also multiple 6 times earlier in the conversation, the lenders all 7 had the -- the preapproved underwriting criteria 8 established in any changes taking place. They still 9 had the right to go in and -- and review anything at 10 the end of the day. This was one suggestion of do 11 we make that a -- does this system make that 12 mandatory that they have to go in and do that 13 review, or do we keep leaving -- leaving that as 14 what I mentioned earlier, as more of a belts and 15 suspenders approach to where they know that it's 16 already there, met their criteria, they know they 17 can audit. It's just the third step in the process 18 where you can that make manually -- or make that 19 mandatory. 20 BY MR. ACKELSBURG: 21 Q. Now, at the same time that Think was 22 looking for ways -- or that you, as the chief 23 product officer, was looking at ways to mitigate the 24 true lender risk, Think's true lender risk, am I 25 right that Think also hired the accounting firm of</p> |

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*Counsel to the Debtors and Debtors in
Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

**AFFIDAVIT OF MICHELLE NGUYEN IN SUPPORT OF DEBTORS' MOTION FOR
SUMMARY JUDGMENT OF CERTAIN VIRGINIA AND TEXAS CLAIMS**

I, Michelle Nguyen, having been duly sworn on oath this 27th day of July 2018 state as follows:

1. I am over 21 years of age and am competent to testify to the statements set forth in this affidavit. The statements set forth in this affidavit are true and correct to the best of my knowledge, information, and belief based on my personal knowledge.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949) (collectively, the "Debtors").

2. On April 19, 2018, I was deposed, in person, under oath (the "Deposition"). A true and correct copy of excerpts from the official transcript of the Deposition are attached hereto as Exhibit A (the "Transcript").

3. I adopt, restate and incorporate the excerpts from the Deposition, as recorded in the Transcript, as my statements in support of the Debtors' *Motion for Summary Judgment of Certain Virginia and Texas Claims*.

4. If called upon, I could and would testify to the facts contained herein and the statements made at the Deposition as recorded in the Transcript.

Executed on this 27th day of July 2018, in the County of DALLAS, TX

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.


Michelle Nguyen

Michelle Nyugen

| | |
|--|--|
| <p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p>COMMONWEALTH OF PENNSYLVANIA * BY ATTORNEY GENERAL JOSH * SHAPIRO, * Plaintiff, * * VS. * Civil Action * No. 14-7139-JCJ THINK FINANCE, INC., et al., * Defendants. *</p> <p>*****</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF MICHELLE NYUGEN APRIL 19, 2018</p> <p>*****</p> <p>DEPOSITION of MICHELLE NYUGEN, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 19th day of April, 2018, from 9:04 a.m. to 5:20 p.m., before Christy R. Sievert, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the offices of Hunton & Williams, LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p> | <p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S (continued)</p> <p>2 COUNSEL FOR THINK FINANCE, INC.:</p> <p>3 MR. MATT GATEWOOD 4 Eversheds Sutherland (US), LLP 700 Sixth Street, NW, Suite 700 5 Washington, D.C. 20001 Phone: 202-383-0100 6 E-mail: mattgatewood@eversheds-sutherland.com</p> <p>7 COUNSEL FOR VICTORY PARK CAPITAL:</p> <p>8 MR. DANIEL P. SHAPIRO 9 MR. MATTHEW W. HAWS Katten Muchin Rosenman, LLP 10 525 W. Monroe Street Chicago, Illinois 60661 11 Phone: 312-902-5622 E-mail: daniel.shapiro@kattenlaw.com 12 matthew.haws@kattenlaw.com</p> <p>13 COUNSEL FOR NATIONAL CREDIT ADJUSTERS:</p> <p>14 MR. PATRICK DAUGHERTY 15 Van Ness Feldman, LLP 1050 Thomas Jefferson Street, NW 16 Seventh Floor Washington, D.C. 20007 17 Phone: 202-298-1874 E-mail: pod@vnf.com</p> <p>18 ALSO PRESENT: 19 GUS PHILLIPS, Videographer 20 KEVIN BYERS 21 SCOTT ZEMINCK (Appearing telephonically)</p> <p>22 23 24 25</p> |
| <p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 COUNSEL FOR THE COMMONWEALTH OF PENNSYLVANIA:</p> <p>3 MR. JOHN J. GROGAN 4 MR. IRV ACKELSBERG 5 Langer, Grogan & Diver, PC 1717 Arch Street, Suite 4130 6 Philadelphia, Pennsylvania 19103 Phone: 215-320-5701 7 E-mail: iackelsberg@langergrogan.com jgrogan@langergrogan.com</p> <p>8 MR. SAVERIO "SAM" MIRARCHI 9 Senior Deputy Attorney General Bureau of Consumer Protection 10 1600 Arch Street, Suite 300 Philadelphia, Pennsylvania 19103 11 Phone: 215-560-2445 E-mail: smirarchi@attorneygeneral.gov</p> <p>12 COUNSEL FOR MICHELLE NYUGEN: 13 MR. RICHARD L. SCHEFF 14 Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street 15 Philadelphia, Pennsylvania 19109 Phone: 215-772-7502 16 E-mail: rscheff@mmwr.com</p> <p>17 COUNSEL FOR KENNETH REES: 18 MR. DAVID F. HERMAN 19 Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street 20 Philadelphia, Pennsylvania 19109 Phone: 215-772-7502 21 E-mail: dherman@mmwr.com</p> <p>22 23 24 25</p> | <p style="text-align: right;">Page 4</p> <p>1 I N D E X</p> <p>2 PAGE</p> <p>3 Appearances..... 2-3</p> <p>4 Exhibits..... 5-6</p> <p>5 Proceedings..... 7</p> <p>6 MICHELLE NYUGEN:</p> <p>7 Examination by Mr. Grogan..... 8</p> <p>8 Examination by Mr. Gatewood..... 287</p> <p>9 Changes and Signature..... 307-308</p> <p>Reporter's Certification..... 309-310</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> |

1 (Pages 1 to 4)

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TF App. 0024
TF App. 0775

302
Michelle Nyugen

| Page 5 | | | | Page 7 | | | |
|--------|-------------|---|------|--------|--|--|--|
| 1 | EXHIBITS | | | 1 | PROCEEDINGS | | |
| 2 | PLAINTIFFS | DESCRIPTION | PAGE | 2 | THE VIDEOGRAPHER: We are now on the | | |
| 3 | Exhibit 178 | Key Initiatives, Growth & Profitability | 84 | 3 | record for the videotaped deposition of Michelle | | |
| 4 | | TF-PA 671684 - 671695 | | 4 | Nguyen. The time is 9:04 a.m., April 19, 2018. In | | |
| 5 | Exhibit 179 | E-mail correspondence | 119 | 5 | the matter of the Commonwealth of Pennsylvania, et | | |
| 6 | | 7-31-13, Re: Updated | | 6 | al, vs. Think Finance, Incorporated, et al., Civil | | |
| 7 | Exhibit 180 | E-mail correspondence | 167 | 7 | Action No. 14-7139-JCJ, being held in the United | | |
| 8 | | 5-20-14, Re: MBL Council | | 8 | States Court for the Eastern District of | | |
| 9 | | Visit 5-27-14 (2).pptx | | 9 | Pennsylvania. | | |
| 10 | Exhibit 181 | E-mail correspondence | 184 | 10 | The court reporter is Christy Sievert, and | | |
| 11 | | 11-21-14, Re: Plain Green | | 11 | the videographer is Gus Phillips. Both are | | |
| 12 | | Control of Loan Underwriting | | 12 | representatives of Kaplan, Leaman & Wolfe Court | | |
| 13 | | Criteria and Process | | 13 | Reporters. | | |
| 14 | | TF-PA 673863 - 673864 | | 14 | Will counsel please state their | | |
| 15 | Exhibit 182 | E-mail correspondence | 186 | 15 | appearances for the record. | | |
| 16 | | 5-8-15, Re: Plain Green Agreement | | 16 | MR. GROGAN: John Grogan for the | | |
| 17 | | TF-PA 667815 - 667817 | | 17 | Commonwealth of Pennsylvania. | | |
| 18 | Exhibit 183 | E-mail correspondence | 197 | 18 | MR. ACKELSBURG: Irv Ackelsberg, same. | | |
| 19 | | 3-18-14, Re: Summer Job | | 19 | MR. MIRARCHI: Saverio Mirarchi for | | |
| 20 | | TF-PA 120366 - 120369 | | 20 | the Commonwealth of Pennsylvania. | | |
| 21 | Exhibit 184 | E-mail correspondence | 201 | 21 | MR. DAUGHERTY: Patrick Daugherty on | | |
| 22 | | 4-17-14, Re: Updated Online | | 22 | behalf of National Credit Adjusters. | | |
| 23 | | Consumer Lending 2014.pptx | | 23 | MR. HAWS: Matthew Haws on behalf of | | |
| 24 | | TF-PA 276040 - 276067 | | 24 | the Victory Park defendants. | | |
| 25 | Exhibit 185 | E-mail correspondence | 215 | 25 | MR. SHAPIRO: Dan Shapiro for the | | |
| | | 4-11-13, Re: Decks from qbr | | | | | |
| | | TF-PA 611729 - 611756 | | | | | |
| | Exhibit 186 | E-mail correspondence | 232 | | | | |
| | | 5-2-13, Re: Exec agenda | | | | | |
| | | TF-PA 515479 - 515544 | | | | | |
| | Exhibit 187 | E-mail correspondence | 241 | | | | |
| | | 5-7-15, Re: Board Tutorial | | | | | |
| | | 5-7-14.pptx | | | | | |
| | | TF-PA 708090 - 708151 | | | | | |

| Page 6 | | | | Page 8 | | | |
|--------|-------------|-----------------------------------|------|--------|---|--|--|
| 1 | EXHIBITS | | | 1 | Victory Park defendants. And Scott Zeminck is on | | |
| 2 | (continued) | | | 2 | the phone with us, general counsel of Victory Park. | | |
| 3 | PLAINTIFFS | DESCRIPTION | PAGE | 3 | MR. GATEWOOD: Matthew Gatewood for | | |
| 4 | Exhibit 188 | E-mail correspondence | 246 | 4 | the Think Finance defendants. | | |
| 5 | | 3-30-12, Re: VPC Covenant | | 5 | MR. HERMAN: David Herman on behalf of | | |
| 6 | | - Max Lines on PGL | | 6 | Kenneth E. Rees. | | |
| 7 | | TF-PA 309917 - 309919 | | 7 | MR. SCHEFF: Richard Scheff for | | |
| 8 | Exhibit 189 | E-mail correspondence | 250 | 8 | Michelle Nguyen. | | |
| 9 | | 10-4-13, Re: AGAIN! Decision: | | 9 | MR. GROGAN: Could we also identify a | | |
| 10 | | Tribal customer acquisition | | 10 | second person on the phone, please? Is there -- | | |
| 11 | | TF-PA 244554 - 244557 | | 11 | MR. HERMAN: No, that's the -- | | |
| 12 | Exhibit 190 | E-mail correspondence | 261 | 12 | MR. SCHEFF: He already did. | | |
| 13 | | 5-3-13, Re: Latest Consumer | | 13 | MR. ACKELSBURG: That was just this | | |
| 14 | | Loan Agreements | | 14 | phone. All right. | | |
| 15 | Exhibit 191 | E-mail correspondence | 266 | 15 | MR. GROGAN: Swear in the witness, | | |
| 16 | | 1-18-13, Re: PG credit agreement | | 16 | please. | | |
| 17 | | TF-PA 041391 - 041392 | | 17 | MICHELLE NYUGEN | | |
| 18 | DEFENDANT'S | DESCRIPTION | PAGE | 18 | having been first duly sworn, | | |
| 19 | Exhibit 1 | E-mail correspondence | 288 | 19 | testified as follows: | | |
| 20 | | 11-21-14, Re: Privileged | | 20 | EXAMINATION | | |
| 21 | | and Confidential: Re: Plain | | 21 | BY MR. GROGAN: | | |
| 22 | | Green Control of Loan | | 22 | Q. Good morning, Ms. Nguyen. | | |
| 23 | | Underwriting Criteria and Process | | 23 | A. Good morning. | | |
| 24 | | TF-PA 673861 - 673862 | | 24 | Q. Am I pronouncing your last name correctly? | | |
| 25 | | | | 25 | A. Yes. | | |

2 (Pages 5 to 8)

| Page 101 | Page 103 |
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| <p>1 Q. -- Plain Green, not Great Plains?</p> <p>2 A. With Plain Green.</p> <p>3 Q. And do you -- do you know why?</p> <p>4 A. Why. . .</p> <p>5 Q. Why Plain Green, but not Great Plains?</p> <p>6 A. At that time, Great Plains was not live.</p> <p>7 Q. So Plain Green was ready to -- to go live</p> <p>8 earlier than Plain Green -- than Great Plains?</p> <p>9 A. From the timeline I recall, Plain Green was</p> <p>10 live in the spring. Great Plains was live in the</p> <p>11 summer.</p> <p>12 Q. So you testified before that at least as of</p> <p>13 November 2010, there had been no conversation with</p> <p>14 the tribes.</p> <p>15 A. Not with me.</p> <p>16 Q. Okay. Do you know if anybody else at Think</p> <p>17 Finance had been talking to tribes?</p> <p>18 A. Talking to tribes?</p> <p>19 Q. Yeah.</p> <p>20 A. I don't -- I don't know.</p> <p>21 Q. Okay. And Plain Green was up and lending</p> <p>22 when?</p> <p>23 A. I believe the date was in April.</p> <p>24 Q. Of 2011?</p> <p>25 A. Correct.</p> | <p>1 Q. Okay. And that eventually became</p> <p>2 Mobiloans?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And Mobiloans was a line of credit</p> <p>5 product?</p> <p>6 A. That's correct.</p> <p>7 Q. And were you involved in the decision as</p> <p>8 to -- or why was Mobiloans line of credit instead of</p> <p>9 installment?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 You can answer the question.</p> <p>12 A. I wasn't part of that decision, because I</p> <p>13 wasn't part of the initial ideation of that tribe.</p> <p>14 BY MR. GROGAN:</p> <p>15 Q. Who was?</p> <p>16 A. Jason Harvison.</p> <p>17 Q. Okay. Would Jason have decided that they</p> <p>18 should be a line of credit product?</p> <p>19 MR. GATEWOOD: Objection; form.</p> <p>20 MR. SCHEFF: Object to the form.</p> <p>21 A. When we have ideation with a -- with a</p> <p>22 tribe as a service provider, we talk about the</p> <p>23 different options. And so I would -- I would not</p> <p>24 say that it was his decision.</p> <p>25 BY MR. GROGAN:</p> |
| Page 102 | Page 104 |
| <p>1 Q. And they were the first of the -- of the</p> <p>2 tribal products?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And who followed Plain Green in</p> <p>5 terms of coming on live?</p> <p>6 A. Who followed?</p> <p>7 Q. Which tribe followed?</p> <p>8 A. Oh, after?</p> <p>9 Q. Yeah.</p> <p>10 A. The second tribe was Otoe-Missouria, and</p> <p>11 the offering was called Great Plains.</p> <p>12 Q. Okay. And both of the Great -- both the</p> <p>13 Great Plains product and the Plain Green product</p> <p>14 were installment loan products; is that correct?</p> <p>15 A. Both Plain Green and Great Plains were</p> <p>16 installment loan offerings.</p> <p>17 Q. Okay. And then there came a time when you</p> <p>18 developed a relationship with the -- the Tunica</p> <p>19 tribe in Louisiana; is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. Did you travel there?</p> <p>22 A. I did later.</p> <p>23 Q. Okay. But not for the initial discussions</p> <p>24 of the potential relationship?</p> <p>25 A. No.</p> | <p>1 Q. Okay.</p> <p>2 A. It was a decision made by all parties.</p> <p>3 Q. Okay. And what's the difference between an</p> <p>4 installment product and a line of credit product?</p> <p>5 A. The installment product is a closed loan</p> <p>6 product, where a consumer can pay the loan off over</p> <p>7 several payments. And just depends on the term and</p> <p>8 the length of the loan.</p> <p>9 A line of credit product is an open --</p> <p>10 open-ended product, meaning that they have a credit</p> <p>11 upon which they can draw and pay down and draw</p> <p>12 again.</p> <p>13 Q. Okay. And had Think Finance ever been</p> <p>14 involved with the line of credit product before</p> <p>15 Mobiloans?</p> <p>16 A. Yes.</p> <p>17 Q. To the point where it got live?</p> <p>18 A. Yes.</p> <p>19 Q. And what product was that?</p> <p>20 A. Elastic.</p> <p>21 Q. Elastic. The state-based Elastic?</p> <p>22 A. This is Elastic that is in partnership with</p> <p>23 a bank.</p> <p>24 Q. Irving Trust Bank?</p> <p>25 A. That's correct.</p> |

| Page 105 | Page 107 |
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| <p>1 Q. How long did that product last?</p> <p>2 A. I can't recall. I wasn't in charge of that</p> <p>3 offering, so I don't --</p> <p>4 Q. Who was in charge of that?</p> <p>5 A. Jason Harvison, ultimately. But an</p> <p>6 individual named Kerry Baker at the time.</p> <p>7 Q. Okay. So at this time now, with the three</p> <p>8 tribal products coming online, what were your</p> <p>9 responsibilities at Think?</p> <p>10 A. In 2011?</p> <p>11 Q. Yeah.</p> <p>12 A. My responsibilities were similar in regards</p> <p>13 to my relationship with First Bank of Delaware. I'm</p> <p>14 a service provider, and assisted them in terms of</p> <p>15 defining the product, making sure it was live, to</p> <p>16 their specifications. The brand, the marketing,</p> <p>17 look and the feel, and any enhancements they wanted</p> <p>18 to the product offering, as well as just being their</p> <p>19 general point of contact.</p> <p>20 Q. And you had responsibility for those</p> <p>21 functions with regard to each of the tribal</p> <p>22 products: Great Plains, Plain Green, and Mobiloans?</p> <p>23 A. Plain Green and Great Plains in 2011, and</p> <p>24 then eventually Mobiloans.</p> <p>25 Q. Who was handling Mobiloans in 2011?</p> | <p>1 Q. Okay. That was on a separate platform?</p> <p>2 A. That's correct.</p> <p>3 Q. Did they have different names?</p> <p>4 A. The -- the platforms?</p> <p>5 Q. Yeah.</p> <p>6 A. I mean, the -- what I recall from the --</p> <p>7 the platform for Mobiloans, the loan -- the core</p> <p>8 loan management system was called CoreCard. So that</p> <p>9 was actually the first time we utilized an outside</p> <p>10 loan management system. And then it was part of the</p> <p>11 overall platform.</p> <p>12 Q. And which of the tribal products resided on</p> <p>13 CoreCard?</p> <p>14 A. Just the line of credit, the Mobiloans</p> <p>15 offering.</p> <p>16 Q. Okay. And the others remained. And do you</p> <p>17 know why that was?</p> <p>18 A. Why?</p> <p>19 Q. Why the line of credit product would be on</p> <p>20 a separate loan management platform than the</p> <p>21 installment loan products.</p> <p>22 A. Speed to market.</p> <p>23 Q. How -- how so?</p> <p>24 A. As I mentioned before, our -- our platform</p> <p>25 was designed to support payday and installment</p> |
| Page 106 | Page 108 |
| <p>1 A. It was Jason Harvison, along with that</p> <p>2 Kerry Baker.</p> <p>3 Q. And what was the -- why was -- do you</p> <p>4 understand why Mobiloans was not within your purview</p> <p>5 at that point, in 2011?</p> <p>6 A. It was -- my understanding, was just</p> <p>7 bandwidth. As you're assisting an organization with</p> <p>8 a startup, there's a lot of -- lot to do as a</p> <p>9 startup organization. And so I just didn't have</p> <p>10 enough bandwidth.</p> <p>11 Q. Now, as you started out in 2011, were the</p> <p>12 Great Plains and Plain Green products on the -- the</p> <p>13 loan management system at Think Finance?</p> <p>14 A. They were using the loan management system.</p> <p>15 Q. Okay.</p> <p>16 A. Our platform.</p> <p>17 Q. The same one that ThinkCash and PayDay One</p> <p>18 had been on?</p> <p>19 A. As the service provider, they were using</p> <p>20 the same platform. Again, it was segregated, as a</p> <p>21 service provider will do.</p> <p>22 Q. But the same platform?</p> <p>23 A. Correct.</p> <p>24 Q. And was Mobiloans also on that platform?</p> <p>25 A. No.</p> | <p>1 loans. It would take longer to make modifications</p> <p>2 for a line of credit. And so the decision was made</p> <p>3 technically to utilize another loan management</p> <p>4 system to -- to embed into the overall platform.</p> <p>5 Q. You testified earlier that Plain Green came</p> <p>6 online in April of 2011.</p> <p>7 A. Yes.</p> <p>8 Q. When did Great Plains go live, if you</p> <p>9 recall?</p> <p>10 A. I recall the summer of -- of that year.</p> <p>11 Q. And how about Mobiloans?</p> <p>12 A. I -- I recall the fall of that year.</p> <p>13 Q. All right. Let's try Document A.</p> <p>14 How are you doing?</p> <p>15 A. I need to go to the restroom.</p> <p>16 MR. SCHEFF: We've been going a little</p> <p>17 less than an hour. Do you want to go to the</p> <p>18 restroom?</p> <p>19 THE WITNESS: Yeah.</p> <p>20 THE VIDEOGRAPHER: We are off the</p> <p>21 record. The time is 11:14 a.m.</p> <p>22 (Break taken, 11:14 a.m. to 11:25 a.m.)</p> <p>23 THE VIDEOGRAPHER: We are back on the</p> <p>24 record. The time is 11:25 a.m.</p> <p>25 BY MR. GROGAN:</p> |

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| <p style="text-align: right;">Page 109</p> <p>1 Q. Ms. Nguyen, before we move on to the next 2 document, I wanted to ask you some follow-up 3 questions about the meetings, the initial meetings 4 with certain of the tribes. 5 You testified that the first one you 6 attended was in South Dakota with Mr. Webb; is that 7 correct? 8 A. Right. 9 Q. Who else was at that meeting? 10 A. From Think Finance? 11 Q. Who entirely. 12 A. At least with Think Finance, it was myself, 13 Sarah Cutrona, Chris Lutes, Ken Rees. 14 Q. Okay. Do you recall anybody else from the 15 tribal side? 16 A. It was only one meeting. I -- I don't 17 recall who else. It was really just Butch Webb and 18 whoever his associates were. 19 Q. I see. And over the course of your career 20 at Think Finance, how many initial meetings with 21 tribal entities did you attend? 22 A. And you define "initial meetings" as the 23 first meeting? The introductory meeting? 24 Q. Yeah. 25 A. Six or seven.</p> | <p style="text-align: right;">Page 111</p> <p>1 grounds, if you will. 2 Q. So what if the tribes that you were 3 speaking with had no money to lend? 4 MR. GATEWOOD: Objection; form. 5 MR. SCHEFF: Object to the form. 6 A. In our earlier discussions, we didn't go 7 into that level of detail. It was -- 8 BY MR. GROGAN: 9 Q. In the first -- 10 A. -- introductory, about who we were and who 11 they are and if there was a -- 12 Q. Well, I just imagine that if I were a 13 tribe, particularly an impoverished tribe, the first 14 thing I would say is, "Well, how -- I don't have any 15 money to lend. How can I be a lender?" Did that 16 ever come up? 17 MR. GATEWOOD: Objection; form. 18 MR. SCHEFF: Object to the form. 19 A. I think I recall a meeting or so where a 20 tribe would indicate that it would want to 21 understand the next steps if they wanted to become a 22 lender and to have partnerships with us. 23 BY MR. GROGAN: 24 Q. And how did you respond to that? 25 A. My response would be -- what I recall</p> |
| <p style="text-align: right;">Page 110</p> <p>1 Q. Okay. And generally, what would occur at 2 such a meeting? Did they follow a pattern? 3 A. Generally, the introductory meetings, we 4 would meet with individuals of the tribe, so whether 5 that be individuals as part of their economic 6 development organization, as an example, or even if 7 the tribe was smaller, possibly with the chairman or 8 the vice chairman or chairperson. 9 We would talk a bit about Think Finance 10 and the capabilities that we had as service 11 provider. We would talk about, you know, the 12 platform, the marketing services, the underwriting 13 services. We would discuss, you know, the -- if 14 they were so inclined, even go to a deeper 15 discussion of, you know, what they were initially 16 thinking from a product perspective. 17 And then we would also get to know that 18 tribe and really understand them as a tribe. I 19 said, you know, earlier, their -- their essence, 20 meaning, you know, what's important to them for the 21 tribe, how that's important in terms of their brand, 22 and building that brand to make sure it aligned with 23 the tribe's values. And -- and part of that was 24 actually meeting with other members of the tribe and 25 walking around, you know, the -- the tribe's</p> | <p style="text-align: right;">Page 112</p> <p>1 saying was, you know, we needed to understand a 2 little bit more, sign an NDA, and we can start 3 having an ideation session with them. 4 Q. But a tribe not having any money to lend 5 wasn't a deal breaker for Think Finance, right? 6 MR. GATEWOOD: Objection; form. 7 MR. SCHEFF: Object to the form. 8 A. Yeah, I can't recall the specifics. Each 9 tribe is different in terms of why we would partner 10 with them or not, or if the tribe decided to partner 11 with us. It goes both ways. 12 BY MR. GROGAN: 13 Q. Well, the three tribes that you did partner 14 with, at least in 2011 -- 15 A. Okay. 16 Q. -- did they have lending capital available? 17 A. You know, I wasn't privy to their 18 financials and how they utilized it. So . . . 19 Q. You didn't participate, you said, in the 20 negotiation of the terms with regard to the three 21 tribes in 2011. Is that -- was that your testimony? 22 A. That's correct. 23 Q. Did you later come to participate in 24 negotiations with other tribes? 25 A. I participated in the negotiations of the</p> |

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| <p style="text-align: right;">Page 113</p> <p>1 existing tribes at a later date.</p> <p>2 Q. When was that?</p> <p>3 A. I believe it was either -- it was probably</p> <p>4 2014 or 2013.</p> <p>5 Q. Renegotiation of the deals with. . .</p> <p>6 A. With -- renegotiating of the contracts with</p> <p>7 the Chippewa, Otoe, and Tunica.</p> <p>8 Q. Okay. How long -- how many times were</p> <p>9 those deals renegotiated? Do you recall?</p> <p>10 A. Each tribe was different.</p> <p>11 Q. How about Plain Green?</p> <p>12 A. I recall specifically three times.</p> <p>13 Q. Three times?</p> <p>14 A. Uh-huh (affirmative response).</p> <p>15 Q. How about Mobiloans?</p> <p>16 A. What I recall is -- when I left, they were</p> <p>17 still negotiating, so I guess you can call it one</p> <p>18 and a half.</p> <p>19 Q. Okay. And how about Plain Green -- or</p> <p>20 Great Plains. Sorry.</p> <p>21 A. For the Otoe, I think it's similar in terms</p> <p>22 of it wasn't complete. So you could say one and a</p> <p>23 half.</p> <p>24 Q. And in those subsequent negotiations; that</p> <p>25 is, not the first negotiation, were you involved in</p> | <p style="text-align: right;">Page 115</p> <p>1 hired new individuals in terms of the organization.</p> <p>2 And they specifically had indicated to me that</p> <p>3 they're looking for a short-term renegotiation of</p> <p>4 six months because they're eventually going to not</p> <p>5 need the services of Think Finance as a platform</p> <p>6 provider. They had already evolved, and this is</p> <p>7 already, call it, four or five years of the</p> <p>8 evolution of their offering, so they were. . .</p> <p>9 BY MR. GROGAN:</p> <p>10 Q. And so we're talking about 2014?</p> <p>11 A. Correct.</p> <p>12 Q. By 2014, they -- they felt they were pretty</p> <p>13 close to being able to go on their own?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 You can answer the question.</p> <p>16 A. In 2014, I specifically had conversations</p> <p>17 with their COO, who indicated that they only wanted</p> <p>18 to do a six-month deal in order to -- because they</p> <p>19 were going to separate and not need Think Finance as</p> <p>20 a platform provider or a service provider anymore.</p> <p>21 BY MR. GROGAN:</p> <p>22 Q. And at that time, did you think they were</p> <p>23 ready to go on their own?</p> <p>24 A. I was surprised, because they didn't share</p> <p>25 internal strategies. Which, that's their decision.</p> |
| <p style="text-align: right;">Page 114</p> <p>1 those?</p> <p>2 A. For the -- the Chippewa?</p> <p>3 Q. Yes, let's start there.</p> <p>4 A. Yeah. I was involved in the second, but</p> <p>5 not the -- the third. I think I -- I had already</p> <p>6 left by the time it was completed.</p> <p>7 Q. And who else from Think was involved in</p> <p>8 that renegotiation discussion?</p> <p>9 A. You know, this was in 2014, so it was</p> <p>10 Martin Wong.</p> <p>11 Q. Okay. Anybody else?</p> <p>12 A. Counsel probably, just to write it up, and</p> <p>13 the CFO at the time.</p> <p>14 Q. How about the second go-round with</p> <p>15 Mobiloans?</p> <p>16 A. Mobiloans was around the same time period,</p> <p>17 and so that would involve Martin Wong as well.</p> <p>18 Q. What precipitated the renegotiation? Was</p> <p>19 there a term to the first agreement that expired, or</p> <p>20 just new issues arose, or. . .</p> <p>21 MR. SCHEFF: Object to the form.</p> <p>22 You can answer the question.</p> <p>23 A. Each tribe was different. So for the</p> <p>24 Chippewa Cree, they had indicated that they wanted</p> <p>25 to renegotiate the terms because they were -- had</p> | <p style="text-align: right;">Page 116</p> <p>1 That's their business strategy. So, yes, I was</p> <p>2 surprised.</p> <p>3 Q. You were surprised?</p> <p>4 A. Uh-huh (affirmative response).</p> <p>5 Q. How about with Mobiloans, do you recall</p> <p>6 what occasioned their desire to -- to renegotiate?</p> <p>7 MR. SHELDON: Object to the form.</p> <p>8 You can answer.</p> <p>9 A. So the -- the Tunica tribe, they were</p> <p>10 always looking to take on more ownership. And so I</p> <p>11 think that's what -- that was the -- the reason.</p> <p>12 BY MR. GROGAN:</p> <p>13 Q. And how about with regard to Great Plains?</p> <p>14 MR. SCHEFF: Same objection.</p> <p>15 You can answer.</p> <p>16 A. I can't recall Otoe specifically, just</p> <p>17 because, like I said, that was a longer process, and</p> <p>18 it wasn't complete. So I can't recall the -- the</p> <p>19 start, why.</p> <p>20 BY MR. GROGAN:</p> <p>21 Q. And do you recall in your tenure at Think</p> <p>22 Finance, did Think ever come to an agreement with</p> <p>23 another tribe other than the Chippewa, the Otoe, and</p> <p>24 the Tunica?</p> <p>25 A. Not when I was there. When I had left, we</p> |

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| <p style="text-align: right;">Page 117</p> <p>1 were still in negotiations with another tribe.</p> <p>2 Q. Do you happen to know whether they've come</p> <p>3 to an agreement with another tribe since you've</p> <p>4 left?</p> <p>5 A. I'm aware that they have.</p> <p>6 Q. And which tribe is that?</p> <p>7 A. I believe they're called Rosebud South</p> <p>8 Dakota.</p> <p>9 Q. Okay. And is there a lending product</p> <p>10 associated with the Rosebud tribe?</p> <p>11 A. Yes.</p> <p>12 Q. Now, as I understand it, Mobiloans is still</p> <p>13 in business. Is that correct?</p> <p>14 A. That's my understanding.</p> <p>15 Q. Do you know if Plain Green is still in</p> <p>16 business?</p> <p>17 A. That's my understanding. They're doing it</p> <p>18 themselves.</p> <p>19 Q. Okay.</p> <p>20 A. They have their own platform.</p> <p>21 Q. Do you know if anybody from Think Finance</p> <p>22 is working with Plain Green?</p> <p>23 A. I understand that there's some individuals</p> <p>24 that are working, yeah.</p> <p>25 Q. Do you know who they are?</p> | <p style="text-align: right;">Page 119</p> <p>1 the American Web Loan offering that they had prior.</p> <p>2 I don't -- I don't know what happened with Great</p> <p>3 Plains or if it's on or off or what have you.</p> <p>4 Q. When you left, Great Plains was still live</p> <p>5 with Think Finance?</p> <p>6 MR. GATEWOOD: Objection; form.</p> <p>7 A. When I left, Think Finance was still</p> <p>8 supporting the Great Plains platform.</p> <p>9 BY MR. GROGAN:</p> <p>10 Q. Okay. Let's -- let's change directions a</p> <p>11 little -- well, not really, but let's get a new</p> <p>12 document, anyway. We're marking this as P-179. And</p> <p>13 I would ask you to take a look at that. The --</p> <p>14 there is a cover e-mail, but my main interest is</p> <p>15 with the attachments and e-mail which. . .</p> <p>16 (Exhibit No. P-179 marked.)</p> <p>17 BY MR. GROGAN:</p> <p>18 Q. Again, my question is, you're familiar with</p> <p>19 this?</p> <p>20 A. Let me look through it.</p> <p>21 (Reviews document.)</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. All set?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recognize this document?</p> |
| <p style="text-align: right;">Page 118</p> <p>1 A. Yes.</p> <p>2 Q. Who are they?</p> <p>3 A. Linda Callnin.</p> <p>4 Q. Linda Callnin is working for Plain Green?</p> <p>5 A. That's my understanding.</p> <p>6 Q. Anybody else?</p> <p>7 A. An individual in marketing.</p> <p>8 Q. Do you recall the name?</p> <p>9 A. His name is Guy Dilger.</p> <p>10 Q. Anybody else?</p> <p>11 A. I think another person in accounting.</p> <p>12 Q. Anybody else?</p> <p>13 A. From Think Finance?</p> <p>14 Q. Yeah. Or -- or somebody who might have</p> <p>15 gone to Elevate.</p> <p>16 A. Those are the three that I recall.</p> <p>17 Q. Okay. Are you in contact with those folks?</p> <p>18 A. I am via LinkedIn.</p> <p>19 Q. How about Great Plains? Now, I understand</p> <p>20 it, Great Plains went out of business at some point.</p> <p>21 A. Okay.</p> <p>22 Q. I mean, do you know that?</p> <p>23 A. I haven't kept up with their offering.</p> <p>24 Q. Do you know if they're back in the market?</p> <p>25 A. I -- what I understand is, Otoe still has</p> | <p style="text-align: right;">Page 120</p> <p>1 A. I'm familiar with it now.</p> <p>2 Q. Were you the author of this document?</p> <p>3 A. I think so.</p> <p>4 Q. All right. Our metadata indicates that as</p> <p>5 well. Okay. Great.</p> <p>6 This is -- we've jumped ahead quite a bit.</p> <p>7 We're in April of 2013.</p> <p>8 A. Is it April or July?</p> <p>9 Q. You're right. July. July. Okay.</p> <p>10 What is an executive offsite, by the way?</p> <p>11 A. That's where the executive team and key</p> <p>12 leaders go to an all-day session to do strategy</p> <p>13 planning.</p> <p>14 Q. Did you do that regularly in the course of</p> <p>15 your business?</p> <p>16 A. Quarterly.</p> <p>17 Q. Quarterly. Okay. And who would attend?</p> <p>18 A. The executives and key leaders.</p> <p>19 Q. So Mr. Rees?</p> <p>20 A. Sorry. Yes. Ken, Chris Lutes, Jason</p> <p>21 Harvison, Sarah Cutrona, Kevin Dahlstrom.</p> <p>22 Q. I don't mean to -- to flatter you, but my</p> <p>23 understanding is that you're in that executive</p> <p>24 group. Or is that not an accurate reading of your</p> <p>25 hierarchy?</p> |

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| <p style="text-align: right;">Page 125</p> <p>1 hires, you mean a hire within the tribal lending 2 organization, the Plain Green, Great Plains, and 3 Mobiloans? 4 A. That's correct. 5 Q. Not additional staff at Think Finance? 6 A. No. 7 Q. Okay. And all three have -- had tribal 8 call centers at that point; that's correct? 9 A. Yes. 10 Q. Okay. So if there's nothing filled in the 11 box underneath each of the tribal products, that 12 means that that benchmark of tribalization had not 13 yet been established? 14 MR. GATEWOOD: Objection; form. 15 A. From what I recall, if there wasn't an 16 indication here, then the tribe was still utilizing 17 Think Finance to provide those services and wasn't 18 able to take that in-house yet. 19 BY MR. GROGAN: 20 Q. Okay. Good. 21 You talk about the -- one of the items is 22 "tribal regulatory commission." Do you recall what 23 that was referring to? 24 A. From what I recall, I mean, that was 25 guidance based off of internal counsel.</p> | <p style="text-align: right;">Page 127</p> <p>1 What third-party contracts are you referring to? 2 A. This is 2013? 3 Q. July 2013. 4 A. From what I recall, these would be 5 contracts such as an agreement with a marketing 6 organization to print their direct mail pieces. In 7 the beginning, because it's a startup, oftentimes 8 us, as the marketing agency, would have the -- the 9 direct contracts. And the thought is, now that it's 10 over time, and the tribe had always indicated that 11 they wanted to evolve and do things on their own, 12 this is one of those indications of "You can have 13 the direct contract with the print house," as an 14 example. 15 Q. I see. This is 2013, though, and they 16 started in 2011. So we're two years into the tribal 17 lending programs? 18 A. Depends -- right. Because each tribe went 19 live different times. And so, you know, as -- that 20 would be one and a half, two years, you know, which 21 is pretty young in a startup organization. 22 Q. Okay. Well, with regard to Plain Green, it 23 was -- they started in April of '11. And this is 24 July 13th, right? 25 A. Sure.</p> |
| <p style="text-align: right;">Page 126</p> <p>1 MR. GROGAN: This is your moment. 2 MR. GATEWOOD: You have to ask another 3 question. 4 MR. GROGAN: Oh, okay. 5 BY MR. GROGAN: 6 Q. Counsel recommended that you have tribal 7 regulatory -- that they have tribal regulatory 8 commissions? 9 MR. GATEWOOD: I would instruct the 10 witness not to answer to the extent that the answer 11 is derived from discussions with in-house counsel. 12 BY MR. GROGAN: 13 Q. Okay. To the extent -- and I really don't 14 want you to tell me what your counsel told you. But 15 do you have any understanding that didn't come from 16 counsel as to why tribal regulatory commissions were 17 important? 18 MR. SCHEFF: Object to the form. 19 You can answer the question. 20 A. The information I understand from tribal 21 regulatory, that piece came from counsel. 22 BY MR. GROGAN: 23 Q. I understand. Okay. 24 "All third-party contracts in the tribe's 25 name." And there's nothing filled in, in the boxes.</p> | <p style="text-align: right;">Page 128</p> <p>1 Q. So that's two years. 2 A. Okay. 3 Q. And with regard to Great Plains, you said 4 it was the summer of 2011? 5 A. Sure. 6 Q. So that's two years. 7 A. And then Mobiloans is not -- 8 Q. A little bit less? 9 A. Right. 10 Q. Okay. What about the risk credit 11 committee, what was that function -- what's the 12 function of a risk credit committee? 13 A. The function of a risk credit committee 14 would be within a -- a lending organization to -- to 15 formally have a credit committee that would have 16 individuals that are working in the organization 17 with the rest -- with an underwriting or risk 18 background. 19 Q. Doing underwriting and risk analysis? 20 MR. GATEWOOD: Objection; form. 21 MR. SCHEFF: Object to the form. 22 A. Each organization, as a lender, can have -- 23 their credit committees can vary. Some of them -- 24 BY MR. GROGAN: 25 Q. And so what they do --</p> |

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| <p style="text-align: right;">Page 129</p> <p>1 A. Some of them can be specifically the</p> <p>2 underwriting, or some of them can be review and</p> <p>3 audit.</p> <p>4 Q. And why did you think it important that the</p> <p>5 tribes have risk credit committees?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. As I mentioned before, you know, as the</p> <p>8 evolution of the tribes, you know, this is another</p> <p>9 step for them to take on ownership and evolve as a</p> <p>10 lender and to, you know, have -- to begin doing</p> <p>11 their own underwriting. They, you know, still are</p> <p>12 looking to us as experts.</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. What couldn't they do without a risk credit</p> <p>15 committee that you thought they should be doing?</p> <p>16 MR. GATEWOOD: Objection; form.</p> <p>17 A. I don't -- I wouldn't say it that way, in</p> <p>18 terms of what they couldn't -- or could not do.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. How would you say it?</p> <p>21 A. You know, as they've evolved, to, you know,</p> <p>22 create more controls and audits in place. And this</p> <p>23 is an example of a -- one of those. Just like a</p> <p>24 large organization, you'll have a SOC. But small</p> <p>25 organizations that are startups, you don't have SOC;</p> | <p style="text-align: right;">Page 131</p> <p>1 a risk credit committee would be doing and why it</p> <p>2 was important for the tribes to be doing that.</p> <p>3 MR. SCHEFF: Do you have a question</p> <p>4 there? Why don't you ask --</p> <p>5 MR. GROGAN: Yeah.</p> <p>6 MR. SCHEFF: -- the question?</p> <p>7 MR. GROGAN: Well, that's the</p> <p>8 question.</p> <p>9 MR. SCHEFF: Well, it didn't sound</p> <p>10 like a question. So why don't you rephrase it to</p> <p>11 sound like a question?</p> <p>12 MR. GROGAN: Can you read back what I</p> <p>13 wrote?</p> <p>14 COURT REPORTER: "Let's ask right in</p> <p>15 July 2013. Because you wrote this down as an</p> <p>16 important -- I assume an important item. And I'm</p> <p>17 not clear about what you meant with regard to those</p> <p>18 functions, what a risk credit committee would be</p> <p>19 doing and why it was important for the tribes to be</p> <p>20 doing that."</p> <p>21 MR. SCHEFF: Is that your question?</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. What did the risk credit -- what would a</p> <p>24 risk credit committee do, and why was it important</p> <p>25 for the tribes to be doing it?</p> |
| <p style="text-align: right;">Page 130</p> <p>1 one, because it's not necessary.</p> <p>2 Q. I see. And what functions of a risk credit</p> <p>3 committee -- were those functions simply not being</p> <p>4 done, or was Think Finance doing it?</p> <p>5 MR. GATEWOOD: Objection; form.</p> <p>6 A. I think, as I mentioned, it all depends on</p> <p>7 the -- the definitions each lender would have for a</p> <p>8 credit committee. But they -- each of the tribes</p> <p>9 worked with Think Finance to perform underwriting</p> <p>10 capabilities and provide recommendations, and every</p> <p>11 single time there is any changes or recommendations</p> <p>12 to changes, the tribes would review that, and we</p> <p>13 would have lengthy discussions of the impact to the</p> <p>14 portfolio.</p> <p>15 BY MR. GROGAN:</p> <p>16 Q. What would the tribe do to work with Think</p> <p>17 to develop the underwriting principles? What did</p> <p>18 they do?</p> <p>19 A. I think it depends on the stage of their</p> <p>20 evolution. So are you -- are you asking in 2011,</p> <p>21 when they started, or in 2014?</p> <p>22 Q. Let's ask right now in 20 -- in July 2013.</p> <p>23 Because you wrote this down as an important -- I</p> <p>24 assume an important item. And I'm not clear about</p> <p>25 what you meant with regard to those functions, what</p> | <p style="text-align: right;">Page 132</p> <p>1 MR. GATEWOOD: Objection; form.</p> <p>2 MR. SCHEFF: Object to the form.</p> <p>3 You can answer the question if you can.</p> <p>4 A. Each tribe is different. So an example is</p> <p>5 Mobiloans. They are always reviewing and are -- any</p> <p>6 of the underwriting, or they can also audit. So</p> <p>7 that it would be a formalization of that process.</p> <p>8 That could be minutes. That could look like in the</p> <p>9 form of a weekly internal evaluation of the</p> <p>10 portfolio. And it's just formalized.</p> <p>11 BY MR. GROGAN:</p> <p>12 Q. So they were doing something already, but</p> <p>13 it just wasn't formalized?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 You can answer the question if you can.</p> <p>16 A. Like, from what I recall, again, it's a lot</p> <p>17 of the -- as a startup, a lot of things weren't</p> <p>18 formalized. And so these were recommendations, just</p> <p>19 like those other items, to formalize as you grow an</p> <p>20 organization.</p> <p>21 BY MR. GROGAN:</p> <p>22 Q. Do you recall any instance in which one of</p> <p>23 the tribal lending partners suggested a change to</p> <p>24 the underwriting?</p> <p>25 A. Yes.</p> |

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| <p style="text-align: right;">Page 133</p> <p>1 MR. GATEWOOD: Objection; form.</p> <p>2 A. Sorry.</p> <p>3 BY MR. GROGAN:</p> <p>4 Q. When?</p> <p>5 A. I don't remember the time, but I do</p> <p>6 remember different tribes and different discussions</p> <p>7 of the changes to --</p> <p>8 Q. What changes were they concerning?</p> <p>9 A. You know, one example for Mobiloans is,</p> <p>10 they wanted to change the underwriting for returning</p> <p>11 customers and provide -- identify those good</p> <p>12 customers and provide a rewards program. And so it</p> <p>13 was two part, one for credit and one for the</p> <p>14 reduction in the -- in the price point.</p> <p>15 Q. They wanted to create a rewards program?</p> <p>16 A. That's correct.</p> <p>17 Q. And that's relating to underwriting?</p> <p>18 A. It is, because you have to identify the</p> <p>19 customers that are likely candidates to be rewarded.</p> <p>20 You're not going to reward someone that's</p> <p>21 delinquent.</p> <p>22 Q. I understand. So they wanted to create a</p> <p>23 rewards program?</p> <p>24 A. Right. And so that would be part of the --</p> <p>25 the risk decision, identifying those customers, when</p> | <p style="text-align: right;">Page 135</p> <p>1 Q. And with regard to former customers in</p> <p>2 Plain Green.</p> <p>3 A. Okay.</p> <p>4 Q. Do you recall any other instances?</p> <p>5 A. Great Plains.</p> <p>6 Q. Okay.</p> <p>7 A. Great Plains was -- you know, a lot of that</p> <p>8 discussion was about the acquisition of new</p> <p>9 customers and is there an opportunity to loosen the</p> <p>10 credit criteria in order to obtain new customers,</p> <p>11 even though it would be at a higher default.</p> <p>12 Q. And when did those occur?</p> <p>13 A. I would have to go back and look at those</p> <p>14 notes. But those are the examples that I recall in</p> <p>15 terms of risk credit decisions and discussions.</p> <p>16 Q. And do you recall any other examples?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Go ahead.</p> <p>19 A. Okay. Again, for, you know, Plain Green,</p> <p>20 another discussion item was around, you know, can we</p> <p>21 champion and challenge the different mail pieces,</p> <p>22 and does that mean that the -- you should change the</p> <p>23 underwriting underneath that?</p> <p>24 Q. What were their problems with the mail</p> <p>25 pieces?</p> |
| <p style="text-align: right;">Page 134</p> <p>1 are they going to be offered it, how does the</p> <p>2 rewards program look. And so there was a lengthy</p> <p>3 discussion that was -- I really recall that, for</p> <p>4 sure.</p> <p>5 Q. Do you recall any others?</p> <p>6 A. Plain Green, you know, there was different</p> <p>7 times in terms of whether it be former customers and</p> <p>8 what that price point would look like, new</p> <p>9 customers, the loan amounts to offer.</p> <p>10 Q. When did these discussions occur with Plain</p> <p>11 Green?</p> <p>12 A. In terms of these specific discussions, I</p> <p>13 can't recall. We had discussions -- I talked to</p> <p>14 the -- each of these tribes every day about</p> <p>15 different topics. We met weekly with the tribes to</p> <p>16 review, you know, risks and underwriting changes, as</p> <p>17 well as platform changes and marketing changes.</p> <p>18 Q. I understand that. But my question was</p> <p>19 about changes initiated by the tribes.</p> <p>20 A. So I would -- I would have to go back and</p> <p>21 look at any documents to give you the specific dates</p> <p>22 of each of these items that they --</p> <p>23 Q. You talked about the rewards program with</p> <p>24 regard to Mobiloans.</p> <p>25 A. Uh-huh (affirmative response).</p> | <p style="text-align: right;">Page 136</p> <p>1 A. I think it was more --</p> <p>2 MR. GATEWOOD: Objection; form.</p> <p>3 A. Sorry. It was more of an opportun- -- it</p> <p>4 wasn't a -- an objection to it. It was really</p> <p>5 discussion of an opportunity to improve and to</p> <p>6 optimize. And so we had a lengthy discussion about</p> <p>7 that, because you don't want to change too many</p> <p>8 variables for a test.</p> <p>9 BY MR. GROGAN:</p> <p>10 Q. Okay. Anything else?</p> <p>11 A. You know, for Mobiloans, we had a lengthy</p> <p>12 discussion about what made up the risk criteria,</p> <p>13 what's in some of the proprietary scores that we had</p> <p>14 built for them. And so we kind of -- we talked</p> <p>15 through that quite at length. I do recall that.</p> <p>16 Q. Did you make changes because of that?</p> <p>17 A. No. The -- that discussion was really</p> <p>18 involved in really understanding all of the pieces</p> <p>19 that went into the risk core, because they wanted to</p> <p>20 make sure, in test, that it wasn't -- the score</p> <p>21 wasn't build for a disparate impact, which was a</p> <p>22 very good point that they brought out. And we had</p> <p>23 to demonstrate that over and -- time and time again.</p> <p>24 And that became actually a quarterly kind of</p> <p>25 exercise that we had to do for -- for that tribe.</p> |

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| Page 137 | <p>1 Q. Okay. Good.</p> <p>2 With regard to Great Plains, was</p> <p>3 MacFarlane still playing a role?</p> <p>4 A. Correct.</p> <p>5 Q. What was the role that they were playing</p> <p>6 with Great Plains Lending?</p> <p>7 A. As I mentioned, MacFarlane was already</p> <p>8 working with Otoe. They had the other offering, the</p> <p>9 American Web Loan product, but they also supported</p> <p>10 the -- that tribe for back-end services, such as</p> <p>11 hiring of the call center folks, HR, payroll,</p> <p>12 their -- their books, if you will, the financials,</p> <p>13 reconciling their P&L.</p> <p>14 Q. Did Mobiloans or Plain Green have a similar</p> <p>15 organization working with them?</p> <p>16 MR. GATEWOOD: Objection; form.</p> <p>17 MR. SCHEFF: Object to the form.</p> <p>18 A. Plain Green did not have a back-end</p> <p>19 consulting organization, that I was aware of. And</p> <p>20 Mobiloans did not have one. Mobiloans would utilize</p> <p>21 different vendors to assist because they were a</p> <p>22 startup and they can't do everything in-house.</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Good.</p> <p>25 Take a look at page 7, if you would.</p> |
| Page 139 | <p>1 and so it caused some unacceptable defects that we</p> <p>2 had to work through.</p> <p>3 Q. Okay. But those defects would have been</p> <p>4 caused by Think Finance difficulties, or -- or</p> <p>5 deficits at Mobiloans?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. This line specifically was the platform</p> <p>8 defects, and so it was the platform itself. You</p> <p>9 know, it could be within the CoreCard build itself,</p> <p>10 which is not something that was proprietary to Think</p> <p>11 Finance. Or it could have been around the platform</p> <p>12 itself that touched CoreCard. So it's both pieces.</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. Right. But Mobiloans didn't have CoreCard</p> <p>15 within their purview, right? That was something</p> <p>16 that Think Finance had?</p> <p>17 MR. GATEWOOD: Objection; form.</p> <p>18 A. CoreCard is part of the platform that was</p> <p>19 licensed to --</p> <p>20 BY MR. GROGAN:</p> <p>21 Q. Who licensed it?</p> <p>22 A. Who licensed. . .</p> <p>23 Q. CoreCard.</p> <p>24 A. Oh, I don't -- I don't recall. I don't</p> <p>25 know. I'd have to look at the contracts. I was --</p> |
| Page 138 | <p>1 These are benchmarks of what you think an industry</p> <p>2 leader looked like? Is that a fair statement of</p> <p>3 what this is trying to capture?</p> <p>4 A. That's -- that's a fair statement.</p> <p>5 Q. Okay. And, again, the same -- same drill:</p> <p>6 If there's not a checkmark, that means it's missing</p> <p>7 from that particular tribal product?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. If it was not a checkmark, then this is my</p> <p>10 opinion --</p> <p>11 BY MR. GROGAN:</p> <p>12 Q. Okay.</p> <p>13 A. -- of what was lacking and what needed to</p> <p>14 be improved.</p> <p>15 Q. Okay. And with regard to "stable and</p> <p>16 scalable product with minimal compliance defects,"</p> <p>17 that's -- Plain Green and GPL are okay, in your --</p> <p>18 in your opinion, at that point?</p> <p>19 A. That's correct.</p> <p>20 Q. But Mobiloans was still challenged in that</p> <p>21 area?</p> <p>22 A. That's correct. I think -- you recall that</p> <p>23 I said that we had utilized a different loan</p> <p>24 management system, the CoreCard. Because it wasn't</p> <p>25 built in-house, we didn't know all the ins and outs,</p> |
| Page 140 | <p>1 Q. But was it Think Finance or Mobiloans?</p> <p>2 MR. GATEWOOD: Objection; form.</p> <p>3 BY MR. GROGAN:</p> <p>4 Q. Or a Think Finance-related entity?</p> <p>5 MR. GATEWOOD: Same objection.</p> <p>6 A. I -- I don't know. That's a technical -- I</p> <p>7 was not part of that.</p> <p>8 BY MR. GROGAN:</p> <p>9 Q. That's fine.</p> <p>10 What was the metric that you were using in</p> <p>11 determining whether there were minimal compliance</p> <p>12 defects? Do you recall?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 A. I don't -- there was not another piece of</p> <p>15 paper that had 12 items. This is based on my</p> <p>16 opinion from a product perspective and if there were</p> <p>17 defects. Any defect as a platform provider is not</p> <p>18 acceptable.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. And I just want to be clear. When you say</p> <p>21 a "stable platform" in that -- that item, you're</p> <p>22 talking about the technical loan platform, you're</p> <p>23 not talking about, for instance, tribal leadership</p> <p>24 or marketing --</p> <p>25 A. I'm talking about the technical platform.</p> |

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| <p style="text-align: right;">Page 145</p> <p>1 referenced here, this says half of it, RISE has 2 access to. They get the first pass. What did that 3 mean?</p> <p>4 MR. SCHEFF: Object to the form.</p> <p>5 A. You know, from what I recall, it's -- you 6 know RISE, as I said before, the -- we identify the 7 universe of consumers that are responsive and would 8 have a decent default, and then we would overlap 9 them with the RISE states, and then anything -- 10 remainder, we would -- as this says, we would split 11 amongst the tribes.</p> <p>12 BY MR. GROGAN:</p> <p>13 Q. Who's "we"?</p> <p>14 A. The -- as a marketing agency --</p> <p>15 Q. That's what you'd do? You'd allocate them 16 first to RISE, and then if there were a remainder, 17 to tribal products; is that right?</p> <p>18 MR. GATEWOOD: Objection; form.</p> <p>19 A. We -- as -- you know, as I stated, we would 20 identify those for RISE, and then any of the 21 remainders, we would recommend splitting them up 22 between the other three tribes --</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. And how would you --</p> <p>25 A. -- or direct mail.</p> | <p style="text-align: right;">Page 147</p> <p>1 their budget. Or, actually, I would say the end of 2 the prior year for budget planning purposes. And we 3 would talk to them about their revenue goals, and we 4 would back into: Well, if you want X, then you need 5 Y type of customers at XZ assumption in terms of 6 revenue.</p> <p>7 And so we would create a budget like any 8 organization. We would work with them as a 9 marketing organization, and we'd say: Okay, this is 10 your budget for X amount of customers. We would try 11 to meet that with these different channels, whether 12 it be direct mail, or -- you know, for Great Plains, 13 it also included lead generation, paid search, 14 affiliate traffic.</p> <p>15 BY MR. GROGAN:</p> <p>16 Q. Now, direct mail, by its nature, is an 17 invitation to a customer to respond to a particular 18 product offering; is that right?</p> <p>19 A. In general.</p> <p>20 Q. So there would be direct mail that would 21 say, "Please call RISE if you want a loan," right? 22 And there would be some direct mail that said, 23 "Please call Plain Green if you want a loan," right?</p> <p>24 MR. GATEWOOD: Objection; form.</p> <p>25 A. There's different versions of direct mail.</p> |
| <p style="text-align: right;">Page 146</p> <p>1 Q. -- split them up -- how would you split 2 them up between the tribes?</p> <p>3 A. You know, it really depended on different 4 factors.</p> <p>5 Q. Like what factors?</p> <p>6 A. What the goals were for each of the tribes 7 in terms of the revenue growth, what each tribe 8 looked like in terms of their offering. You know, 9 Great Plains had a higher APR, and so they were -- 10 that product was inclined to take a riskier customer 11 base, as well as the other channels that the tribes 12 were interested in. And so all of those came into 13 play when we talked about the direct mail pieces and 14 where they went.</p> <p>15 Q. Okay. And who would get direct mail and 16 who wouldn't?</p> <p>17 A. Again, like, it's all of those factors that 18 I indicated.</p> <p>19 Q. Okay. And you said one of the factors was 20 what the goals for the revenue growth of the 21 individual tribal products was. Whose goals were 22 they?</p> <p>23 MR. GATEWOOD: Objection; form.</p> <p>24 A. In the beginning of each year, we would 25 meet with each of the tribes, because they're doing</p> | <p style="text-align: right;">Page 148</p> <p>1 There could be a pre-approval. There could be an 2 invitation to apply. There could be another -- a 3 repeat customer direct mail piece to remind them of 4 the brand.</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. Right. But they would all be 7 brand-specific, wouldn't they?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. Okay. So you're -- okay. That's 10 fine.</p> <p>11 It says, "No current differentiation 12 between other channels today. Should other channels 13 follow DM volume split?"</p> <p>14 And my first question is, what are the 15 other channels?</p> <p>16 A. I -- you know, the -- I -- I can't really 17 remember this -- this bullet point. I mean. . .</p> <p>18 Q. Did you mean other marketing channels?</p> <p>19 A. Yes. But I don't -- I can't remember why I 20 put this here. Sorry. I just really can't 21 remember.</p> <p>22 Q. Okay. Well, what are -- what are the other 23 marketing channels?</p> <p>24 A. Paid search, lead generation. Lead 25 generation was really only for Great Plains.</p> |

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| <p>1 Affiliate traffic for all three. And then there's</p> <p>2 repeat -- repeat customers are also considered a</p> <p>3 channel.</p> <p>4 Q. This document was created for the executive</p> <p>5 offsite, right?</p> <p>6 A. That's correct.</p> <p>7 Q. Were tribal members or -- or</p> <p>8 representatives of Plain Green, Mobiloans, or Great</p> <p>9 Plains at that -- at those meetings?</p> <p>10 A. No.</p> <p>11 Q. Okay. Now, "Items to consider," and you</p> <p>12 have some characteristics of the three different</p> <p>13 tribal lending organizations. For instance,</p> <p>14 Mobiloans is -- has "Strong political influence,"</p> <p>15 "Lowest profit share," "Currently most profitable,</p> <p>16 but will change as we lower pricing."</p> <p>17 Now, what are these items to consider</p> <p>18 relevant to?</p> <p>19 A. They were -- from what I'm thinking, from</p> <p>20 what I recall, these items were relevant for</p> <p>21 identifying the best channels for each of the</p> <p>22 different portfolios.</p> <p>23 Q. I see.</p> <p>24 A. So an example would be that, you know, as</p> <p>25 Mobiloans is currently the most profitable, but will</p> | <p>1 Q. And for Think Finance?</p> <p>2 A. No, we -- it all depended on, you know,</p> <p>3 each of the -- each of the contracts with each</p> <p>4 tribes were different. But . . .</p> <p>5 Q. I'm sorry, are you suggesting that a</p> <p>6 profitable Mobiloans product is not profitable to</p> <p>7 Think Finance?</p> <p>8 A. No, I --</p> <p>9 MR. GATEWOOD: Objection; form.</p> <p>10 MR. SCHEFF: Misstates the testimony.</p> <p>11 MR. GROGAN: Okay. I'm just asking</p> <p>12 for the clarity.</p> <p>13 MR. SCHEFF: Let's not play games</p> <p>14 here.</p> <p>15 MR. GROGAN: Richard.</p> <p>16 MR. SCHEFF: You're just playing</p> <p>17 games. She -- you know she didn't say that. Just</p> <p>18 ask your question.</p> <p>19 MR. GROGAN: I'm just asking her to</p> <p>20 clarify that.</p> <p>21 A. I -- I didn't say that. I said --</p> <p>22 BY MR. GROGAN:</p> <p>23 Q. Okay. What did you say?</p> <p>24 A. -- profitable -- I said profitable equals</p> <p>25 revenue minus the losses, and that would be</p> |
| Page 150 | Page 152 |
| <p>1 change over lower pricing, I indicated that the</p> <p>2 tribe really wanted a rewards program, thus would</p> <p>3 lower the pricing. To that end, a lead generation</p> <p>4 as a channel would not fit in terms of that</p> <p>5 Mobiloans offering, because typically lead</p> <p>6 generation has a higher default -- has a higher</p> <p>7 default with a lower price at the spread or the --</p> <p>8 and won't be profitable for that tribe.</p> <p>9 Q. And when you're saying Mobiloans is</p> <p>10 currently the most profitable, profitable to whom?</p> <p>11 A. I believe when I was writing this, it was</p> <p>12 just in general, in terms of revenue minus the</p> <p>13 losses. So the interest revenue minus the losses.</p> <p>14 Q. But most profitable to Think Finance?</p> <p>15 MR. GATEWOOD: Objection; form.</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. I -- I didn't say that. I said profitable</p> <p>18 as it pertains to -- I always looked at revenue</p> <p>19 minus losses. Keep it simple in terms of that.</p> <p>20 BY MR. GROGAN:</p> <p>21 Q. Right. But a profitable product -- a</p> <p>22 profitable Mobiloans product is profitable for Think</p> <p>23 Finance and Mobiloans, right?</p> <p>24 A. A profitable product is definitely</p> <p>25 profitable for the Tunica tribe, absolutely.</p> | <p>1 profitable for the tribe. And as a service</p> <p>2 provider, we wanted to make sure that each of our</p> <p>3 tribes were profitable and meeting their budgets.</p> <p>4 Q. Because it was profitable to Think Finance,</p> <p>5 right?</p> <p>6 MR. SCHEFF: Object to the form;</p> <p>7 misstates the testimony.</p> <p>8 BY MR. GROGAN:</p> <p>9 Q. Okay. With regard to Mobiloans, it says</p> <p>10 "lowest profit share." What does that refer to?</p> <p>11 A. I believe that refers to the -- their</p> <p>12 profit share of the agreements.</p> <p>13 Q. So they -- they're receiving the lowest</p> <p>14 profit share of -- relative to the other two tribal</p> <p>15 products?</p> <p>16 A. That -- this is relative to the other two</p> <p>17 tribal products.</p> <p>18 Q. And are we talking about the revenue share?</p> <p>19 A. This is profit share.</p> <p>20 Q. Okay.</p> <p>21 A. But it's probably misstated.</p> <p>22 Q. Okay. It says profit share, but do you</p> <p>23 think it referred to revenue share?</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 You can answer the question.</p> |

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| <p style="text-align: right;">Page 165</p> <p>1 MR. GATEWOOD: Objection; form.</p> <p>2 A. From what I recall, this was purposes of --</p> <p>3 for discussion items, and, you know, is there an</p> <p>4 opportunity to reposition the brands.</p> <p>5 BY MR. GROGAN:</p> <p>6 Q. But repositioning them at different</p> <p>7 segments of the -- of the market?</p> <p>8 MR. GATEWOOD: Same objection.</p> <p>9 A. Again, it's repositioning it, and then</p> <p>10 discussing these items with the tribes and get their</p> <p>11 feedback as a marketing agent.</p> <p>12 BY MR. GROGAN:</p> <p>13 Q. But repositioning them with regard to</p> <p>14 different segments of the consumer markets?</p> <p>15 MR. GATEWOOD: Objection; form.</p> <p>16 MR. SCHEFF: Object to the form.</p> <p>17 A. Again, it says "customer and product</p> <p>18 discussion item." And so this is -- these were --</p> <p>19 it's an ideation session. So it's repositioning it</p> <p>20 from a brand perspective, and different customers,</p> <p>21 if that makes sense to them, if it resonates to</p> <p>22 them. . .</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Okay. I understand these are just</p> <p>25 examples. Is -- is there any reason why Plain Green</p> | <p style="text-align: right;">Page 167</p> <p>1 again, for your patience.</p> <p>2 I want to introduce a new document for our</p> <p>3 discussion, and this is going to be Plaintiff's</p> <p>4 Exhibit 180. It's a very large exhibit. You may</p> <p>5 look at as much of it as you need to, but I will</p> <p>6 preface my remarks by saying that I have a question</p> <p>7 about what's on page 27, I think, is the only --</p> <p>8 only part of this document that I'm concerned with.</p> <p>9 (Exhibit No. P-180 marked.)</p> <p>10 MR. SCHEFF: I'm sorry, you said 27?</p> <p>11 MR. GROGAN: Page 27.</p> <p>12 MR. SCHEFF: What's the Bates on that?</p> <p>13 Because these don't appear to be numbered.</p> <p>14 MR. GROGAN: Hold on.</p> <p>15 MR. SCHEFF: Michelle, look at as much</p> <p>16 of this as you need to.</p> <p>17 Oh, I'm sorry.</p> <p>18 MR. GROGAN: Yeah, it's pretty clear.</p> <p>19 MR. SCHEFF: It is -- they have --</p> <p>20 they have numbers. Never mind. Got it.</p> <p>21 A. (Reviews document.)</p> <p>22 27? Is that right?</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Page 27, yes. The PowerPoint 27.</p> <p>25 Have you studied under Dean Smith,</p> |
| <p style="text-align: right;">Page 166</p> <p>1 is not characterized in some way here?</p> <p>2 A. I can't recall. I think these were just</p> <p>3 examples for discussion.</p> <p>4 Q. Okay. Thank you. If we could turn to</p> <p>5 Document D, please.</p> <p>6 MR. SCHEFF: John, we've been going</p> <p>7 about an hour and ten minutes.</p> <p>8 MR. GROGAN: What time is it?</p> <p>9 MR. SCHEFF: 12:35.</p> <p>10 MR. GROGAN: Are we having lunch</p> <p>11 provided, or. . .</p> <p>12 MR. SCHEFF: I guess. I don't know.</p> <p>13 Did you make any arrangements? Because I didn't.</p> <p>14 MR. GROGAN: No. This is an okay</p> <p>15 time. If people need lunch now, that's fine.</p> <p>16 MR. SCHEFF: Okay.</p> <p>17 THE VIDEOGRAPHER: Go off the record?</p> <p>18 MR. GROGAN: Yes.</p> <p>19 THE VIDEOGRAPHER: We are off the</p> <p>20 record at 12:34 p.m.</p> <p>21 (Break taken, 12:34 p.m. to 1:20 p.m.)</p> <p>22 THE VIDEOGRAPHER: We're back on the</p> <p>23 record. The time is 1:20 p.m.</p> <p>24 BY MR. GROGAN:</p> <p>25 Q. Welcome back, Ms. Nguyen. Thank you,</p> | <p style="text-align: right;">Page 168</p> <p>1 Ms. Nguyen? Never mind. Strike that. I'm sorry.</p> <p>2 I couldn't resist.</p> <p>3 Take a look at the first page. I'm sorry,</p> <p>4 I told you 27, but if you look at the cover of the</p> <p>5 document --</p> <p>6 A. This --</p> <p>7 Q. Not the e-mail transmittal, but the cover</p> <p>8 of the PowerPoint.</p> <p>9 A. Okay.</p> <p>10 Q. Do you recall this document?</p> <p>11 A. I recall the document.</p> <p>12 Q. All right. Are you the author of this</p> <p>13 document?</p> <p>14 A. I am author of the majority of this</p> <p>15 document.</p> <p>16 Q. Okay. Fine.</p> <p>17 And what was this document used for? Do</p> <p>18 you recall?</p> <p>19 A. I believe this was a meeting that we met</p> <p>20 with the council. I think we had indicated before</p> <p>21 that I speak to different tribal members every</p> <p>22 single day. We also had an opportunity to go out</p> <p>23 there, and we made it a point of at least meeting</p> <p>24 with each of the councils once a quarter. And so</p> <p>25 this is an example of meeting with the council as a</p> |

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| <p style="text-align: right;">Page 169</p> <p>1 quarter --</p> <p>2 Q. Do you recall or can you tell what the</p> <p>3 purpose of the meeting would have been?</p> <p>4 A. So this is with Mobiloans. It was probably</p> <p>5 twofold. Kind of giving them update on the -- on</p> <p>6 the product and its evolution. And the second part</p> <p>7 is, I -- I believe at this time, there was a new</p> <p>8 chairman of the Tunica tribe.</p> <p>9 Q. So generally informational? This wasn't</p> <p>10 part of renegotiation of a contract or . . .</p> <p>11 A. That's my understanding. I think it was --</p> <p>12 it was just informational and -- as we did every</p> <p>13 quarter.</p> <p>14 Q. Okay. Take a look at page 27, ma'am. This</p> <p>15 slide -- first of all, do you recall being the</p> <p>16 person who wrote this slide?</p> <p>17 A. You know, I don't recall if I did this or</p> <p>18 if this was in conjunction with Chris Lutes.</p> <p>19 Q. Okay. It says, "How do Think and VPC make</p> <p>20 money? Think makes money two ways." You can look</p> <p>21 at that. My first question: Is that accurate?</p> <p>22 A. I -- I mean, I think it's -- it's missing</p> <p>23 more detail.</p> <p>24 Q. What -- what detail is missing?</p> <p>25 A. There's the -- so this is 125 for every</p> | <p style="text-align: right;">Page 171</p> <p>1 of. And I think from what I recall for -- for this</p> <p>2 piece was, Think was the guarantee on -- credit</p> <p>3 guarantee to GPLS for their fixed return, and</p> <p>4 anything beyond that was the revenue for Think.</p> <p>5 Q. Okay. And that's what you believe that</p> <p>6 "credit guarantee provided to GPLS" is -- is</p> <p>7 referring to?</p> <p>8 A. That's what I recall.</p> <p>9 Q. Okay. Take a look -- well, I lied again.</p> <p>10 Page 28, if you'd just look at that for a second.</p> <p>11 And I understand that this isn't your area, but,</p> <p>12 again, my question is, is that generally accurate?</p> <p>13 A. I -- I don't know. Because I see a lot of</p> <p>14 pages in here that are draft, and so I'm not sure if</p> <p>15 that's the final numbers. You know, like, the next</p> <p>16 page is empty, and the other pages before were</p> <p>17 empty, so I wasn't sure -- I don't know if this is a</p> <p>18 draft format. So I don't -- I don't know if those</p> <p>19 numbers are correct.</p> <p>20 Q. Right. But looking at the substantive of</p> <p>21 the numbers themselves, rather than -- I understand</p> <p>22 your point that this may be a draft. But looking at</p> <p>23 the numbers, do they appear to be accurate to you?</p> <p>24 A. I -- I couldn't recall. You know, just to</p> <p>25 your point, I'm not -- I wasn't the CFO, so I don't</p> |
| <p style="text-align: right;">Page 170</p> <p>1 funded loan. That was from a marketing perspective.</p> <p>2 And then there's also the -- the platform piece, and</p> <p>3 that wasn't captured on here. So there's just --</p> <p>4 there's more fees from a service provider</p> <p>5 perspective, I believe.</p> <p>6 Q. Anything else?</p> <p>7 A. No. I think this is. . .</p> <p>8 Q. That's accurate? I'm sorry. Accurate?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 A. Other than the clause I had indicated</p> <p>12 earlier.</p> <p>13 Q. Yeah, what does "credit guarantee provided</p> <p>14 to GPLS" mean, if you know?</p> <p>15 A. As the service provider, we also acted as</p> <p>16 administrative agent, and I believe as part of that,</p> <p>17 it's where the credit guarantee came into place.</p> <p>18 Q. Do you know why it's referred to as the</p> <p>19 credit guarantee rather than the administrative</p> <p>20 agency fee?</p> <p>21 A. Oh, I think I'm getting confused, then.</p> <p>22 Q. Take your time.</p> <p>23 A. So I -- I did misstate. So we indicated</p> <p>24 before, the first bullet is probably missing some</p> <p>25 fees, including the -- the admin fee that I spoke</p> | <p style="text-align: right;">Page 172</p> <p>1 have them memorized and I don't know if this is the</p> <p>2 final version.</p> <p>3 Q. Right. And I -- I should have been</p> <p>4 clearer. I'm not really concerned with the pinpoint</p> <p>5 accuracy as to the number itself, but with the</p> <p>6 general proportion among the three entities</p> <p>7 represented there, MBL, Think, and VPC.</p> <p>8 MR. SHAPIRO: What's the question?</p> <p>9 MR. GROGAN: Is the general proportion</p> <p>10 of the profitability -- I mean, I understand she</p> <p>11 doesn't know whether it's 7.4 or 7.9. But is the</p> <p>12 general proportion accurate?</p> <p>13 MR. SHAPIRO: For 2013 --</p> <p>14 MR. GROGAN: Yeah.</p> <p>15 MR. SHAPIRO: -- for Mobiloans?</p> <p>16 MR. GROGAN: As related -- in</p> <p>17 relationship to Think and VPC.</p> <p>18 MR. SHAPIRO: Okay. I'll object to</p> <p>19 the form of the question. I think the witness has</p> <p>20 already testified she doesn't have the foundation</p> <p>21 for this.</p> <p>22 But go ahead.</p> <p>23 A. Yeah, I -- I would say that I don't -- you</p> <p>24 know, again, this might be in draft form. I believe</p> <p>25 that those are the correct parties, Mobiloans,</p> |

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| Page 201 | Page 203 |
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| <p>1 a Think -- a Mobiloans staff and a -- and a Great 2 Plains staff; is that correct? 3 A. At this time, that's correct. 4 Q. Did it ever come a time when that was true? 5 A. What I recall, early 2011, 2012, we had 6 enough individuals in one organization where they 7 were segregated. 8 Q. But by 2014, that had changed? 9 A. That's correct. 10 Q. Okay. Why had that changed? 11 A. The company split occurred. 12 Q. Not in March of 2014. 13 A. No. But by then, as you see, I said my 14 staff is quite small. So. . . 15 Q. Okay. I see. Okay. Thanks. 16 MR. GROGAN: Can we turn to Document 17 H, please. Document H is P -- will be P-184. 18 (Exhibit No. P-184 marked.) 19 A. (Reviews document.) 20 Okay. 21 BY MR. GROGAN: 22 Q. Okay. Do you recognize this document? 23 A. Yes. 24 Q. What is it? 25 A. I think it's a draft version for an initial</p> | <p>1 turnkey platform for tribal corporations." 2 And what did you mean by the word 3 "turnkey"? 4 A. I think what we were trying to convey is 5 that we are able to offer multiple solutions for a 6 tribe. So that includes the build of the -- the 7 product offering, to marketing services, to 8 underwriting services. 9 Q. Anything else? 10 A. I think here, it also said "Access to 11 third-party capital." We can help facilitate 12 introductions as well as compliance experience. 13 Q. So just looking at this slide on page 17, 14 what you seem to be offering is a proven technology 15 platform, correct? 16 A. Yes. 17 Q. A marketing machine? 18 A. Marketing services, yes. 19 Q. Okay. The underwriting? 20 A. Yes. 21 Q. Access to third-party capital for funding 22 of the loans; is that correct? 23 MR. GATEWOOD: Objection; form. 24 BY MR. GROGAN: 25 Q. What would the third-party capital be for?</p> |
| Page 202 | Page 204 |
| <p>1 meeting with a new tribe. 2 Q. Okay. Do you recall which tribe it was? 3 A. I think it's the Ranchero tribe. I believe 4 they're in California. 5 Q. Okay. And were you the author of this 6 document? 7 A. Yes. 8 Q. This is in April of 2014. And you were 9 still involved at this point in -- in reaching out 10 to new -- potentially new tribal partners? 11 A. Correct. 12 Q. Okay. How many of these would you do a 13 year, these outreaches? 14 A. These outreaches for new tribes? 15 Q. Uh-huh (affirmative response). 16 A. In 2014, I -- I think there were three. 17 Q. Okay. 18 A. Three different tribes. 19 Q. And did any of them come to fruition? 20 A. I think I mentioned before, Rosebud. But 21 they had signed after I had left. 22 Q. I see. Okay. And if you take a look at 23 page 17 of the -- the presentation page 17. 24 A. Okay. 25 Q. And it says, "We have developed a unique</p> | <p>1 A. It would be access to the third-party 2 capital, how they would need to -- to utilize it if 3 they needed to utilize -- 4 Q. Okay. 5 A. -- capital. 6 Q. Did you -- did you ever talk to a tribe 7 that didn't need access to third-party capital? 8 MR. GATEWOOD: Objection; form. 9 A. Yes. 10 BY MR. GROGAN: 11 Q. Which one? 12 A. Rosebud. 13 Q. Okay. Look on page 16 -- I mean -- I'm 14 sorry, 18. "Who does what." And I want you to 15 study this and tell me if you think this is 16 accurate. 17 A. Okay. 18 (Reviews document.) 19 Okay. 20 Q. And we see a list of things that Think 21 Finance will do and some things that the tribal 22 entity will do, the center column being sort of the 23 topics of the various things that have to be done. 24 Is that a fair summary? 25 A. Yes.</p> |

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| <p style="text-align: right;">Page 205</p> <p>1 Q. Okay. And for the tribal entity, they</p> <p>2 would have to do ongoing market reviews -- marketing</p> <p>3 reviews?</p> <p>4 A. That's what this says.</p> <p>5 Q. What would that encompass?</p> <p>6 A. Examples would be the collaboration of</p> <p>7 material, whether it's website material, e-mail</p> <p>8 material, direct mail, what content they wanted to --</p> <p>9 to utilize. We would, as a marketing agent, provide</p> <p>10 recommendations for them to agree, to strike, to</p> <p>11 change.</p> <p>12 Q. And how about "periodic application reviews</p> <p>13 and daily prefunding approval"?</p> <p>14 A. So this is in regards to the platform, as I</p> <p>15 indicated, isn't able to take applications. And so,</p> <p>16 you know, at the ideation, we would sit down with</p> <p>17 the -- the lender and say: Here are all the</p> <p>18 proposed fields that you need for your application.</p> <p>19 Do you agree? And we'll build it. And the consumer</p> <p>20 can then apply online, and you will have access to</p> <p>21 the data if you want to review it. If you think</p> <p>22 that we should not be asking certain fields, then we</p> <p>23 can strike it. So you always have access to that,</p> <p>24 as well as tying to the next point of the</p> <p>25 underwriting criteria. So it's for auditing</p> | <p style="text-align: right;">Page 207</p> <p>1 them would go to a pending status where it would</p> <p>2 have to be verified based on the documentation.</p> <p>3 Q. I understand. But that's as to the</p> <p>4 completeness or incompleteness of the application,</p> <p>5 right? I'm talking about applications that the</p> <p>6 underwriting system approves.</p> <p>7 A. You had asked if -- was it always auto</p> <p>8 approved, and I -- I said no.</p> <p>9 Q. My problem. I don't mean that every</p> <p>10 application was automatically approved.</p> <p>11 A. Okay.</p> <p>12 Q. I mean those applications that met the</p> <p>13 criterion.</p> <p>14 A. Okay.</p> <p>15 Q. And were adequately verified.</p> <p>16 A. Okay.</p> <p>17 Q. They were automatically approved.</p> <p>18 MR. GATEWOOD: Objection; form.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. Is that true?</p> <p>21 A. It all depended on which tribe and what</p> <p>22 criteria. They could say that maybe 5 percent would</p> <p>23 be auto approved, or it could be: No, I want -- I</p> <p>24 want every single application to be approved, to be</p> <p>25 verified.</p> |
| <p style="text-align: right;">Page 206</p> <p>1 purposes as well, did we do what we say we were</p> <p>2 going to do, per your requirements.</p> <p>3 Q. That's the kind of review that they would</p> <p>4 engage in, to check to make sure the application was</p> <p>5 the way they wanted it?</p> <p>6 A. Right. And if they made changes, did we do</p> <p>7 what we say we did, and demonstrate that.</p> <p>8 Q. And how about "daily prefunding approval"?</p> <p>9 A. This was also tied to -- somewhat with the</p> <p>10 underwriting. You know, in the beginning, we would</p> <p>11 say, you know, at a high level, because we're</p> <p>12 experts at -- from a risk management perspective,</p> <p>13 certain customers that meet this kind of criteria,</p> <p>14 you probably do minimal verifications, and the</p> <p>15 system can automatically then approve a customer</p> <p>16 based on that. And then you can also audit those</p> <p>17 applications at any time to make sure it's aligned</p> <p>18 to what we had discussed.</p> <p>19 Q. And is that how the approvals worked? Were</p> <p>20 they done automatically?</p> <p>21 A. Not necessarily.</p> <p>22 Q. In what circumstances were they not done</p> <p>23 automatically?</p> <p>24 A. It's all dependent upon the -- the</p> <p>25 underwriting criteria with that tribe. So some of</p> | <p style="text-align: right;">Page 208</p> <p>1 Q. What does it mean to verify an application</p> <p>2 for approval?</p> <p>3 A. It depends on the creditworthiness.</p> <p>4 Sometimes the criteria would be just to -- for a</p> <p>5 consumer to submit their identification, such as</p> <p>6 FACTA, if someone had a fraud alert and you had to</p> <p>7 submit in your driver's license. Other instances we</p> <p>8 need to verify income.</p> <p>9 Q. How did this work at Plain Green, for</p> <p>10 instance? What did they choose to do with automatic</p> <p>11 approvals?</p> <p>12 A. It's hard to recall, because it's evolved</p> <p>13 over the years since when they started in 2011 to</p> <p>14 when I left.</p> <p>15 Q. Can you recall anything with regard to</p> <p>16 Mobiloans?</p> <p>17 A. Again, it's -- each of them evolved over</p> <p>18 time as -- as the universe would change, as maybe</p> <p>19 there's a fraud ring. And so the criteria is an</p> <p>20 evolution, so I can't --</p> <p>21 Q. Was there a time in --</p> <p>22 A. -- recall --</p> <p>23 Q. -- any of the evolution of any of the</p> <p>24 tribal products where someone at the -- on the</p> <p>25 tribal lending side, at Plain Green or Mobiloans or</p> |

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| <p style="text-align: right;">Page 209</p> <p>1 Great Plains, was reviewing the verifications of</p> <p>2 applications for each application that was funded?</p> <p>3 MR. GATEWOOD: Objection; form.</p> <p>4 A. So you specify verifications. The tribes</p> <p>5 had call centers, and as part of those call centers,</p> <p>6 they performed verifications, and those tribal</p> <p>7 member -- those were employees of that entity. And</p> <p>8 so yes, they would verify.</p> <p>9 BY MR. GROGAN:</p> <p>10 Q. Was there ever a time when anybody on the</p> <p>11 tribal lending side was approving each loan</p> <p>12 individually?</p> <p>13 MR. GATEWOOD: Objection; form.</p> <p>14 A. So the purpose of partnering with a service</p> <p>15 provider is to outline your criteria, and -- so the</p> <p>16 system can do what you dictate. So that way,</p> <p>17 there's not necessarily a reason for you to look at</p> <p>18 every single loan and approve it. They have</p> <p>19 purposes of auditing it to make sure that they</p> <p>20 performed to their satisfaction.</p> <p>21 BY MR. GROGAN:</p> <p>22 Q. Fair enough.</p> <p>23 And with regard to underwriting, they --</p> <p>24 they would approve the -- their function was to</p> <p>25 review and approve the criteria and the loan</p> | <p style="text-align: right;">Page 211</p> <p>1 in the call centers, right?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And with regard to "Collections," it</p> <p>4 says, "Not applicable." Why is that?</p> <p>5 A. I don't know. Maybe this is a draft. I</p> <p>6 don't know why it's not applicable. Loans go past</p> <p>7 due. So...</p> <p>8 COURT REPORTER: I'm sorry?</p> <p>9 A. Loans go past due, so I don't know why --</p> <p>10 this must have been a draft form.</p> <p>11 BY MR. GROGAN:</p> <p>12 Q. Someone would have to collect, right?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Let's turn to page 19. And, again,</p> <p>15 this -- my question is really, generally, as you</p> <p>16 look at this, is this generally accurate?</p> <p>17 A. Generally, this is accurate.</p> <p>18 Q. Okay. There would be no marketing cost to</p> <p>19 the tribes?</p> <p>20 MR. GATEWOOD: Objection; form.</p> <p>21 A. I think those were incorrect words because,</p> <p>22 as we know from the way we structured it, there was</p> <p>23 marketing costs from a cost per loan. And so I</p> <p>24 think we were trying to convey that there's no large</p> <p>25 cost up front from a -- you have to -- a large down</p> |
| <p style="text-align: right;">Page 210</p> <p>1 amounts? That's what they needed to do?</p> <p>2 A. You know, I think I stated earlier, as we</p> <p>3 would start the program and it's ongoing, we would</p> <p>4 provide recommendations in terms of underwriting</p> <p>5 criteria based on their -- their appetite for</p> <p>6 losses, and we would change it, and we would</p> <p>7 discuss.</p> <p>8 Q. Okay. And with regard to "Funding and</p> <p>9 payment processing," it didn't look like that the</p> <p>10 tribe has to do anything there; is that correct? It</p> <p>11 says, "Automated funding process. Fund loans sold</p> <p>12 to third party after two days."</p> <p>13 MR. GATEWOOD: What's the question?</p> <p>14 BY MR. GROGAN:</p> <p>15 Q. Is the tribe doing anything with regard to</p> <p>16 that stage of the process?</p> <p>17 MR. GATEWOOD: Objection; form.</p> <p>18 A. I don't think that this is probably very</p> <p>19 clear. The intent for this was that the platform</p> <p>20 can produce an ACH file, as we talked about before,</p> <p>21 the mechanics, and then send it off to an ODFI, as</p> <p>22 well as payments.</p> <p>23 BY MR. GROGAN:</p> <p>24 Q. Verifications were done -- some of the</p> <p>25 verifications were, in fact, done on the tribal end</p> | <p style="text-align: right;">Page 212</p> <p>1 payment, as an example.</p> <p>2 BY MR. GROGAN:</p> <p>3 Q. Who ended up paying those per-loan</p> <p>4 marketing costs in the TailWind costs? Who ended up</p> <p>5 paying that?</p> <p>6 MR. GATEWOOD: Objection; form.</p> <p>7 A. For which tribe?</p> <p>8 BY MR. GROGAN:</p> <p>9 Q. All three.</p> <p>10 MR. GATEWOOD: Same objection.</p> <p>11 A. I have to go back and -- and look at all of</p> <p>12 the -- the mechanics.</p> <p>13 BY MR. GROGAN:</p> <p>14 Q. Do you recall that GPLS reimbursed those</p> <p>15 costs?</p> <p>16 MR. GATEWOOD: Objection; form.</p> <p>17 A. I'll have to go back and look at some</p> <p>18 documents to refresh.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. You don't recall right now?</p> <p>21 A. I don't recall right now. All the fees get</p> <p>22 confusing after a long time.</p> <p>23 Q. I understand.</p> <p>24 "Minimal credit exposure." What was the</p> <p>25 risk of the loss that the tribes faced in this --</p> |

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| <p style="text-align: right;">Page 217</p> <p>1 A. I would surmise -- this is Jason, so he --</p> <p>2 these are what his -- his notes are to each slide.</p> <p>3 BY MR. GROGAN:</p> <p>4 Q. I see.</p> <p>5 He says on page -- well, the third page</p> <p>6 out -- I'll use the Bates numbers here because the</p> <p>7 presentation pages are obscured. Just go to 733.</p> <p>8 "The main purpose is to discuss the changes that can</p> <p>9 help protect a very large and successful business."</p> <p>10 Protected from what, if you know?</p> <p>11 MR. GATEWOOD: Objection; form.</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. I -- I don't -- I don't know. I didn't</p> <p>14 write this.</p> <p>15 BY MR. GROGAN:</p> <p>16 Q. Did you participate at all in the creation</p> <p>17 of this document?</p> <p>18 A. No. I was off -- I was on vacation.</p> <p>19 Q. Okay. Look at page 15. And I think you</p> <p>20 can see the PowerPoint pages.</p> <p>21 MR. GATEWOOD: Can you give us the</p> <p>22 Bates number, please?</p> <p>23 MR. GROGAN: Sure. I think I can.</p> <p>24 BY MR. GROGAN:</p> <p>25 Q. I'm sorry, let's go to page 19, Bates No.</p> | <p style="text-align: right;">Page 219</p> <p>1 direction.</p> <p>2 MR. GATEWOOD: No, I -- I will</p> <p>3 instruct the witness not to answer to the extent</p> <p>4 that the answer requires her to divulge</p> <p>5 conversations with counsel.</p> <p>6 BY MR. GROGAN:</p> <p>7 Q. Can you answer that without revealing the</p> <p>8 conversations with counsel?</p> <p>9 A. No. The conversations included counsel.</p> <p>10 Q. All conversations that you had regarding</p> <p>11 the true lender problem included counsel?</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. The conversations we had regarding true</p> <p>14 lender included counsel.</p> <p>15 BY MR. GROGAN:</p> <p>16 Q. Apparently, Mr. Harvison has written a</p> <p>17 note, "Risk is similar to what we saw with the bank</p> <p>18 model partnerships." Do you have an understanding</p> <p>19 of what he means there?</p> <p>20 MR. GATEWOOD: Objection; form.</p> <p>21 A. I don't. I can guess. I don't know what</p> <p>22 risk --</p> <p>23 MR. SCHEFF: Don't guess.</p> <p>24 A. I don't know what risk. . .</p> <p>25 MR. SCHEFF: No, I don't want her to</p> |
| <p style="text-align: right;">Page 218</p> <p>1 748.</p> <p>2 The slide says, "Risk to the tribal</p> <p>3 program. Why do we need to restructure the model?</p> <p>4 To protect a growing \$700 million business.</p> <p>5 "What is the risk to the business? States</p> <p>6 may argue that the tribe is not the 'true lender'</p> <p>7 due to TF's involvement."</p> <p>8 Are you familiar with that phrase, the</p> <p>9 "true lender"?</p> <p>10 A. I am familiar with that.</p> <p>11 Q. What do you understand that to mean?</p> <p>12 MR. SCHEFF: Objection.</p> <p>13 To the extent that you can answer that</p> <p>14 question without reference to discussions with</p> <p>15 counsel, please do. If not, then I assume</p> <p>16 Mr. Gatewood will have a direction for you.</p> <p>17 A. I understand the "true lender" definition</p> <p>18 from counsel.</p> <p>19 BY MR. GROGAN:</p> <p>20 Q. Okay. Was there discussion within Think</p> <p>21 Finance about something called the "true lender</p> <p>22 problem"?</p> <p>23 MR. SCHEFF: Just answer the question</p> <p>24 "yes" or "no."</p> <p>25 Unless, Matt, you have a different</p> | <p style="text-align: right;">Page 220</p> <p>1 guess. She's not here to guess, she's here to tell</p> <p>2 the truth. Guessing is not telling the truth.</p> <p>3 She's not going to guess.</p> <p>4 BY MR. GROGAN:</p> <p>5 Q. All right. Okay. Let's take a look at</p> <p>6 page 20. "How is 'true lender' risk mitigated</p> <p>7 today?" And it lines out some activities. And my</p> <p>8 question to you is, looking at the -- looking at the</p> <p>9 activities, not so much the large categorizations,</p> <p>10 but the smaller bullet points, are these things</p> <p>11 that, as you understand it, the tribes are doing?</p> <p>12 A. Let me just make sure -- 2013. At this</p> <p>13 time, I believe that those were the activities the</p> <p>14 tribes were doing.</p> <p>15 Q. Okay. And the activities that they were</p> <p>16 doing on the reservation were program management,</p> <p>17 application verifications, and limited customer</p> <p>18 service work, and EOB review of loan underwriting?</p> <p>19 A. Correct.</p> <p>20 Q. What is EOB review?</p> <p>21 A. End of business. End of business day.</p> <p>22 Q. I see. They were reviewing the</p> <p>23 underwriting at the end of the business day?</p> <p>24 A. It -- it goes back to our discussion of</p> <p>25 they had the opportunity to audit.</p> |

| Page 221 | Page 223 |
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| <p>1 Q. On a daily basis?</p> <p>2 A. Correct.</p> <p>3 Q. Were they actually doing that?</p> <p>4 A. I believe they were. I didn't speak about</p> <p>5 it every day with them.</p> <p>6 Q. Okay.</p> <p>7 A. But I know that they're -- they identified</p> <p>8 some issues that went bump in the night, and they</p> <p>9 brought it to our attention.</p> <p>10 Q. And they were also engaging in approvals</p> <p>11 over the underwriting policies and changes,</p> <p>12 marketing materials, and the product and website</p> <p>13 changes?</p> <p>14 A. That's correct.</p> <p>15 Q. And we talked about that?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. And they own certain key contracts.</p> <p>18 Contracts with the third-party call centers and with</p> <p>19 data providers?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Were the tribes doing anything else</p> <p>22 that's not reflected here?</p> <p>23 A. In 2013? This time period?</p> <p>24 Q. April 2013.</p> <p>25 A. Not that I can recall right now.</p> | <p>1 A. Not Great Plains. They were utilizing the</p> <p>2 MacFarlane Group to that extent. That was -- that</p> <p>3 was their wish.</p> <p>4 Q. Okay. And "Established compliance programs</p> <p>5 with testing." Is it the import of this slide that</p> <p>6 the tribes did not yet have that in place; that was</p> <p>7 an area where they could improve?</p> <p>8 A. 2013. We -- the Think Finance affiliates,</p> <p>9 if you will, were performing the compliance --</p> <p>10 compliance program activities on their behalf and</p> <p>11 providing them the results, and we were encouraging</p> <p>12 them to either hire, as we said, a compliance</p> <p>13 officer, or you can engage another firm.</p> <p>14 Q. Okay. And how about the comprehensive</p> <p>15 financial reporting, that was something Think was</p> <p>16 doing as well at this stage?</p> <p>17 A. I believe so.</p> <p>18 Q. Then there's some contractual changes that</p> <p>19 are contemplated, "Shift from a revenue share to a</p> <p>20 profit share, 51 percent to the tribe." Was that</p> <p>21 ever implemented?</p> <p>22 A. Not while I was there.</p> <p>23 Q. Okay. Do you know if it -- do you know if</p> <p>24 it was done afterward?</p> <p>25 A. I don't know.</p> |
| Page 222 | Page 224 |
| <p>1 Q. Okay. Turn the page to -- I don't know</p> <p>2 what. 22 or 21. "Opportunities to improve."</p> <p>3 A. Okay.</p> <p>4 Q. "Increased oversight by the tribes: Tribal</p> <p>5 management team CEO, CRO, and CCO." Did each of the</p> <p>6 tribal entities at this time have a CEO, CRO, and</p> <p>7 CCO?</p> <p>8 A. 2013. Each tribe was different. Plain</p> <p>9 Green, for example, I believe had the CEO, as well</p> <p>10 as Mobiloans. I can't recall if the -- the CCO was</p> <p>11 already on board -- maybe not yet -- for Mobiloans.</p> <p>12 Q. What's "CCO" stand for?</p> <p>13 A. "Chief compliance officer." And then "CRO"</p> <p>14 is "chief risk officer."</p> <p>15 Q. Okay. And, I'm sorry, I missed your</p> <p>16 testimony. Did -- you said Plain Green had the CEO,</p> <p>17 but not the CRO and CCO?</p> <p>18 A. I believe so at this April of 2013.</p> <p>19 Q. Okay. And how about Mobiloans?</p> <p>20 A. I believe Mobiloans had the CEO, which was</p> <p>21 Marshall Pierite at the time. And I can't recall if</p> <p>22 the CCO was already in place.</p> <p>23 Q. And how about the CRO?</p> <p>24 A. No, not the CRO.</p> <p>25 Q. What about Great Plains?</p> | <p>1 Q. Okay. "Increase tribe ownership from</p> <p>2 1 percent to 5 percent." Was that ever done?</p> <p>3 A. I believe it was done, but I don't --</p> <p>4 again, I wasn't there by the time -- I left. It was</p> <p>5 in -- it was in the works.</p> <p>6 Q. "Transfer marketing agreements to the</p> <p>7 tribe." What does that mean?</p> <p>8 A. Oh, this is in relation to any marketing</p> <p>9 agreements, similar to the third-party data</p> <p>10 providers in the previous slide, to get those</p> <p>11 contracts into the tribal entities' names.</p> <p>12 Q. Because currently, they're in Think</p> <p>13 Finance's name?</p> <p>14 A. Or TailWind is an entity.</p> <p>15 Q. Is the answer the same for the server and</p> <p>16 maintenance agreements?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. I confess to being confused about</p> <p>19 "Operational improvement: Eliminate TF from</p> <p>20 operation activities (fraud and complaint</p> <p>21 management)."</p> <p>22 What do you understand that to mean?</p> <p>23 A. There were certain activities that Think</p> <p>24 Finance was performing on behalf of the tribe, so</p> <p>25 that includes fraud detection, as well as assisting</p> |

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| <p style="text-align: right;">Page 289</p> <p>1 Defendant's Exhibit 1 from Kristen Hensley, refresh 2 your recollection as to how the company responded to 3 that e-mail? 4 A. Yes, that's correct. 5 Q. For the record, can you just read the text 6 of the mail from Kristen Hensley? 7 A. Yes. "Greg, while I understand that you 8 have only been with Plain Green, LLC, for two 9 months, it is important that you realize that there 10 is a long history and series of decisions of which 11 you probably have very little insight. As you are 12 aware, Think Finance and Plain Green do work 13 together on the credit underwriting policies and 14 strategies. At our recent meetings earlier this 15 week, we all agreed to collaborate further on these 16 issues, as evidenced by the two-hour meeting 17 scheduled for today, to specifically discuss 18 underwriting. Many assertions made in the below 19 e-mail are inaccurate, possibly due to your 20 relatively short time period at Plain Green. We are 21 happy to discuss this further with you during the 22 call today and again in ongoing calls." 23 Q. Thank you. And did you work with 24 Ms. Hensley on issues like this? 25 A. Yes.</p> | <p style="text-align: right;">Page 291</p> <p>1 A. Phone, e-mail, as well as in the very 2 beginning, we made a point to go up there at least 3 once a month at the start of the program, and after 4 the program, myself specifically. We wanted to make 5 sure that everything was okay and that the -- the 6 tribe was happy. That included meetings with the 7 members of Plain Green as well as the tribal 8 council. 9 Q. I'll ask you about the tribal council in a 10 second, but in terms of the calls with Plain Green, 11 these are calls that you or other members of your 12 team were having with employees of Plain Green? 13 A. Absolutely. 14 Q. So even from day one, Plain Green had its 15 own employees? 16 A. That's correct. 17 Q. And then over time, would you say the 18 number of employees increased or decreased? 19 A. Over time, the number of employees 20 increased. 21 Q. Did it consistently increase from year to 22 year? So if we looked at, for example, 2011 versus 23 2012, we would see an increase from '11 to '12? 24 A. Yes. 25 Q. Most likely an increase from '12 to '13 and</p> |
| <p style="text-align: right;">Page 290</p> <p>1 Q. And did you often communicate with Plain 2 Green on issues related to this or other issues? 3 A. Yes. 4 Q. Can you -- earlier today, you testified 5 that you had, I think you said, frequent contact 6 with Plain Green. So I want to ask specifically 7 about Plain Green, and then we'll ask a series of 8 the same questions with respect to the other tribes. 9 A. Okay. 10 Q. So with Plain Green, how often was your 11 contact? 12 A. In the very beginning, or just in general? 13 Q. Start at the very beginning. 14 A. In -- in the very beginning, as with a 15 startup, there's a lot of touching, if you will. 16 And so what that means is, it was not only daily, it 17 was almost, you know, hourly, several times an hour, 18 talking about different aspects of starting a 19 lending program as a service provider, whether it be 20 "Here's an update on where we're at" from the 21 website that we discussed about earlier, or you had 22 questions on how underwriting would happen, and 23 it's -- it was a lot of that in the very beginning. 24 Q. And would those conversations occur via 25 phone or e-mail or both?</p> | <p style="text-align: right;">Page 292</p> <p>1 so on? 2 A. That's correct. 3 Q. Okay. Was that the same way with the other 4 two tribes? 5 A. Yes. 6 Q. In terms of number of employees? 7 A. Absolutely. 8 Q. And that the number of employees for both 9 Mobiloans and for Great Plains Lending also 10 increased over time? 11 A. That's correct. 12 Q. Okay. So back to Plain Green. You also 13 mentioned earlier today that you would have weekly 14 meetings with them. 15 A. Yes. 16 Q. Those would occur over the phone? 17 A. Yes. 18 Q. And who would participate in those? 19 A. It would be myself, sometimes Jason 20 Harvison would attend the call, an individual to 21 represent marketing specifically, an individual to 22 represent the risk department specifically. We had 23 a set agenda. The agenda would comprise of always 24 giving an update on the product and enhancements, 25 how we're tracking against their earlier budget from</p> |

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| <p style="text-align: right;">Page 293</p> <p>1 a marketing perspective, as well as any updates on</p> <p>2 risks in the portfolio itself, and if there was any</p> <p>3 questions.</p> <p>4 Q. Do you remember, especially in the first</p> <p>5 year, when Plain Green --</p> <p>6 MR. SCHEFF: Were you finished with</p> <p>7 your answer?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. SCHEFF: Okay.</p> <p>10 BY MR. GATEWOOD:</p> <p>11 Q. When the Plain Green operation was just</p> <p>12 starting up, do you remember who from Plain Green</p> <p>13 would participate in those weekly discussions?</p> <p>14 A. In the very beginning, it would have been</p> <p>15 Neal, as well as Billi Anne.</p> <p>16 Q. That's Neal Rosette?</p> <p>17 A. That's correct, Neal Rosette. And Billi</p> <p>18 Anne Morsette.</p> <p>19 Q. Any others?</p> <p>20 A. On occasion, there might have been a</p> <p>21 question regarding accounting, and so -- I can't</p> <p>22 recall the accounting individual that would</p> <p>23 participate as well.</p> <p>24 Q. As the Plain Green program progressed,</p> <p>25 would there be additional individuals from -- from</p> | <p style="text-align: right;">Page 295</p> <p>1 often. I want to just say probably -- the call was</p> <p>2 every other month, and then we ended up scheduling</p> <p>3 it once a quarter. The objective of meeting with</p> <p>4 the council would be to give the council an update</p> <p>5 on the Plain Green program, how the program was</p> <p>6 tracking against the budget, any other questions.</p> <p>7 We wanted to make sure we had it open</p> <p>8 for -- for the council. It was important that the</p> <p>9 council understand Think Finance and its role as a</p> <p>10 service provider. And that was clearly always the</p> <p>11 case when -- even from the beginning, that Neal and</p> <p>12 Billi Anne, as well as even Joel, they wanted to</p> <p>13 always make sure that the service provider got in</p> <p>14 front of the -- the tribal council so they can</p> <p>15 provide that insight and -- and also building that</p> <p>16 relationship and rapport with the tribal council.</p> <p>17 Q. And where would those meetings with the</p> <p>18 tribal council take place?</p> <p>19 A. It was at Box Elder actually in the council</p> <p>20 headquarters.</p> <p>21 Q. On the reservation?</p> <p>22 A. On the reservations, correct.</p> <p>23 Q. Did it seem to you that as time went by,</p> <p>24 the Plain Green employees learned more about the</p> <p>25 lending operation?</p> |
| <p style="text-align: right;">Page 294</p> <p>1 Plain Green that would participate on the weekly</p> <p>2 calls?</p> <p>3 A. Yes.</p> <p>4 Q. Take a -- you know, 2013 or 2014, and give</p> <p>5 me an example of who might be on the calls at that</p> <p>6 point in time.</p> <p>7 MR. GROGAN: Objection to form.</p> <p>8 A. You know, let's take 2014. You know, let's</p> <p>9 take this November time period. The calls would now</p> <p>10 include Greg Hillyard, who's over compliance. You</p> <p>11 know, Bo Mitchell, who was acting as the chief</p> <p>12 operating officer, which was a brand new role. Joel</p> <p>13 was the CEO and acting in that capacity. Dan would</p> <p>14 often sit in -- Dan Bellcore would often sit in on</p> <p>15 the calls from an attorney perspective, as well</p> <p>16 as -- you know, we would -- so those would be those</p> <p>17 examples of individuals and how they have changed in</p> <p>18 their roles and what they were looking for in those</p> <p>19 calls.</p> <p>20 BY MR. GATEWOOD:</p> <p>21 Q. You also mentioned that you would meet with</p> <p>22 tribal councils. Can you explain, with respect to</p> <p>23 the Chippewa Cree, how often would these meetings</p> <p>24 occur?</p> <p>25 A. In the beginning, we actually met more</p> | <p style="text-align: right;">Page 296</p> <p>1 MR. GROGAN: Objection; form.</p> <p>2 A. Over time, the -- the employees of Plain</p> <p>3 Green certainly learned more and took on more</p> <p>4 responsibilities. In the beginning, that tribe and</p> <p>5 all other the tribes likened the relationship</p> <p>6 somewhere to their casinos that they had and casino</p> <p>7 management, where in the beginning, they would</p> <p>8 ask -- they would lean heavily on the -- on the</p> <p>9 service provider, and eventually learn more and take</p> <p>10 it over. And so that was communicated to us early</p> <p>11 days.</p> <p>12 BY MR. GATEWOOD:</p> <p>13 Q. And in Plain Green's case, Plain Green</p> <p>14 ultimately took over the full, not only lending, but</p> <p>15 also servicing of the program?</p> <p>16 A. Yeah, servicing as well as even the</p> <p>17 platform itself, which is tremendous for them.</p> <p>18 Q. Okay. Let's turn to Great Plains.</p> <p>19 A. Okay.</p> <p>20 Q. From day one, what type of contact did you</p> <p>21 have with Great Plains?</p> <p>22 A. So Great Plains was a little bit different</p> <p>23 because they had MacFarlane, which was beneficial at</p> <p>24 least for the chairman, because he indicated that</p> <p>25 the tribe was quite small and there was a lot that</p> |

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| <p style="text-align: right;">Page 297</p> <p>1 they had to deal with, and they were leaning heavily</p> <p>2 on MacFarlane. They already had, like we said</p> <p>3 before, American Web Loan, which was a lending</p> <p>4 operation that I think was already live for one or</p> <p>5 two years. And so they were familiar with that.</p> <p>6 Our interactions with the -- the tribe,</p> <p>7 you know, in the beginning, they -- they did hire</p> <p>8 someone that's, you know, on site to -- to run the</p> <p>9 call center and to be the point person and that</p> <p>10 reported into both MacFarlane as well as a tribal</p> <p>11 member.</p> <p>12 Q. So even though MacFarlane performed some</p> <p>13 task for Great Plains, they also had their own Great</p> <p>14 Plains employees?</p> <p>15 A. That's correct.</p> <p>16 MR. GROGAN: Objection to the form.</p> <p>17 BY MR. GATEWOOD:</p> <p>18 Q. Did Great Plains have Great Plains</p> <p>19 employees the day that it started making loans?</p> <p>20 A. From what I recall, they -- they did,</p> <p>21 because I -- I recall going up there and training</p> <p>22 certain, you know, individuals. So. . .</p> <p>23 Q. And same question that I asked for Plain</p> <p>24 Green. Was it your understanding as the product</p> <p>25 manager that the Great Plains employees became more</p> | <p style="text-align: right;">Page 299</p> <p>1 available on those calls. And so we always had</p> <p>2 frequent -- she was a direct member -- or she worked</p> <p>3 directly for the tribe, and we always went through</p> <p>4 her if we had questions or needed guidance or</p> <p>5 approvals.</p> <p>6 Q. And would Think Finance employees meet with</p> <p>7 the Otoe-Missouria tribal council as well?</p> <p>8 A. Yes.</p> <p>9 Q. How often were those meetings?</p> <p>10 A. That tribe was a bit busier, and so it</p> <p>11 wasn't as frequent as the Chippewa, but we did</p> <p>12 strive at least quarterly to provide updates.</p> <p>13 Q. And where did those meetings occur?</p> <p>14 A. In Ponca City on tribal land.</p> <p>15 Q. On the reservation?</p> <p>16 A. That's correct.</p> <p>17 Q. With respect to the Tunica-Biloxi and</p> <p>18 Mobiloans, what type of contact did you have with</p> <p>19 them?</p> <p>20 A. For Tunica, I think, as I stated earlier, I</p> <p>21 came on board to support that, call it, you know,</p> <p>22 maybe six or eight months later, after it had</p> <p>23 launched. And the purpose of that was to make</p> <p>24 everything uniform in terms of how we're handling</p> <p>25 our relationships. And so then we ended up visiting</p> |
| <p style="text-align: right;">Page 298</p> <p>1 knowledgeable as time went by?</p> <p>2 A. Yes. That's correct. And they also ended</p> <p>3 up hiring and utilizing more tribal members in terms</p> <p>4 of taking roles and eventually becoming the vice</p> <p>5 president of their consumer lending products.</p> <p>6 Q. Did you have any weekly calls with the</p> <p>7 Great Plains group?</p> <p>8 A. We did. It was very similar format to the</p> <p>9 Plain Green.</p> <p>10 Q. Who would participate on those?</p> <p>11 A. In that format, it would be the -- the</p> <p>12 Great Plains individual and the MacFarlane</p> <p>13 individuals, since that's who does -- that's who</p> <p>14 they designated.</p> <p>15 Q. Would any counsel -- legal counsel for the</p> <p>16 tribe participate?</p> <p>17 A. Yes.</p> <p>18 Q. Who was that?</p> <p>19 A. It changed. In the beginning, it was John</p> <p>20 Kenny Hurts, and then later, it ended up being</p> <p>21 Eric -- I don't recall his last name.</p> <p>22 Q. Eric Low?</p> <p>23 A. Thank you. Eric Low eventually. Oh, I'm</p> <p>24 sorry, and also their in-house counsel -- sorry, I</p> <p>25 forgot -- Rebecca Bartlett, you know, she was always</p> | <p style="text-align: right;">Page 300</p> <p>1 them once a quarter. Again, similar format. We</p> <p>2 would meet with the -- the internal people. With</p> <p>3 Mobiloans, it would be Marshall Pierite as the</p> <p>4 acting CEO or president. Kim Palermo was, I</p> <p>5 believe, hired at the time, and she was a compliance</p> <p>6 officer. And then we would meet with the tribal</p> <p>7 council, the full tribal council.</p> <p>8 Q. From the time period where you had direct</p> <p>9 oversight of Think's relationship with Mobiloans,</p> <p>10 what was your personal contact with them?</p> <p>11 A. Can you clarify?</p> <p>12 Q. Sure. You said that you took oversight of</p> <p>13 the Mobiloans relationship, I guess, in early 2012?</p> <p>14 A. I think so.</p> <p>15 MR. GROGAN: Objection to the form.</p> <p>16 BY MR. GATEWOOD:</p> <p>17 Q. Did you have weekly meetings with Mobiloans</p> <p>18 like you did with Plain Green and Great Plains?</p> <p>19 MR. GROGAN: Objection to the form.</p> <p>20 A. My communication with Mobiloans was weekly,</p> <p>21 but as well as daily. And -- and that's really</p> <p>22 because I was new to the relationship and wanted to</p> <p>23 make sure that they knew who I was and I was</p> <p>24 available and able to support them.</p> <p>25 BY MR. GATEWOOD:</p> |

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*Counsel to the Debtors and Debtors in
Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

**AFFIDAVIT OF LINDA ROGENSKI IN SUPPORT OF DEBTORS' MOTION FOR
SUMMARY JUDGMENT OF CERTAIN VIRGINIA AND TEXAS CLAIMS**

I, Linda Rogenski, having been duly sworn on oath this 27 th day of July 2018 state as follows:

1. I am over 21 years of age and am competent to testify to the statements set forth in this affidavit. The statements set forth in this affidavit are true and correct to the best of my knowledge, information, and belief based on my personal knowledge.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949) (collectively, the "Debtors").

2. On April 18, 2018, I was deposed, in person, under oath (the "Deposition"). A true and correct copy of excerpts from the official transcript of the Deposition are attached hereto as Exhibit A (the "Transcript").

3. I adopt, restate and incorporate the excerpts from the Deposition, as recorded in the Transcript, as my statements in support of the Debtors' *Motion for Summary Judgment of Certain Virginia and Texas Claims*.

4. If called upon, I could and would testify to the facts contained herein and the statements made at the Deposition as recorded in the Transcript.

Executed on this 27th day of July 2018, in the County of Tarrant, Texas.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.


Linda Rogenski

Linda Rogenski

| | |
|--|--|
| <p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p>COMMONWEALTH OF PENNSYLVANIA * BY ATTORNEY GENERAL JOSH * SHAPIRO, * Plaintiff, * * VS. * Civil Action * No. 14-7139-JCJ THINK FINANCE, INC., et al., * Defendants. *</p> <p>*****</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF LINDA ROGENSKI APRIL 19, 2018</p> <p>*****</p> <p>DEPOSITION of LINDA ROGENSKI, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 19th day of April, 2018, from 9:06 a.m. to 4:49 p.m., before Christy R. Sievert, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the Fort Worth Club, 306 West 7th Street, Fort Worth, Texas 76102, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p> | <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued)</p> <p>2 COUNSEL FOR THINK FINANCE, INC.:</p> <p>3 MR. MATTHEW S. SHELDON 4 Goodwin Procter, LLP 5 901 New York Avenue, NW 6 Washington, D.C. 20001 7 Phone: 202-346-4000 8 E-mail: msheldon@goodwinprocter.com</p> <p>9 COUNSEL FOR VICTORY PARK CAPITAL:</p> <p>10 MR. DANIEL P. SHAPIRO 11 MR. MATTHEW W. HAWS 12 Katten Muchin Rosenman, LLP 13 525 W. Monroe Street 14 Chicago, Illinois 60661 15 Phone: 312-902-5622 16 E-mail: daniel.shapiro@kattenlaw.com 17 matthew.haws@kattenlaw.com</p> <p>18 COUNSEL FOR NATIONAL CREDIT ADJUSTERS:</p> <p>19 MR. PATRICK DAUGHERTY 20 Van Ness Feldman, LLP 21 1050 Thomas Jefferson Street, NW 22 Seventh Floor 23 Washington, D.C. 24 Phone: 202-298-1874 25 E-mail: pod@vnf.com</p> <p>ALSO PRESENT: GUS PHILLIPS, Videographer KEVIN BYERS SCOTT ZEMINCK (Appearing telephonically)</p> |
| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 COUNSEL FOR THE COMMONWEALTH OF PENNSYLVANIA:</p> <p>3 MR. IRV ACKELSBURG 4 MR. JOHN J. GROGAN 5 Langer, Grogan & Diver, PC 6 1717 Arch Street, Suite 4130 7 Philadelphia, Pennsylvania 19103 8 Phone: 215-320-5701 9 E-mail: iackelsberg@langergrogan.com 10 jgrogan@langergrogan.com</p> <p>11 MR. SAVERIO "SAM" MIRARCHI 12 Senior Deputy Attorney General 13 Bureau of Consumer Protection 14 1600 Arch Street, Suite 300 15 Philadelphia, Pennsylvania 19103 16 Phone: 215-560-2445 17 E-mail: smirarchi@attorneygeneral.gov</p> <p>18 COUNSEL FOR LINDA ROGENSKI:</p> <p>19 MR. RICHARD L. SCHEFF 20 Montgomery, McCracken, Walker & Rhoads, LLP 21 123 South Broad Street 22 Philadelphia, Pennsylvania 19109 23 Phone: 215-772-7502 24 E-mail: rscheff@mmwr.com</p> <p>25 COUNSEL FOR KENNETH REES:</p> <p>MR. JONATHAN BOUGHURM Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street Philadelphia, Pennsylvania 19109 Phone: 215-772-7502 E-mail: jboughurm@mmwr.com</p> | <p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2-3</p> <p>4 Exhibits..... 5-7</p> <p>5 Proceedings..... 8</p> <p>6 LINDA ROGENSKI:</p> <p>7 Examination by Mr. Ackelsberg..... 9</p> <p>8 Changes and Signature..... 273-274</p> <p>9 Reporter's Certification..... 275-276</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |

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Linda Rogenski

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| 1 | EXHIBITS | | | 1 | EXHIBITS | | |
| 2 | NUMBER | DESCRIPTION | PAGE | 2 | (continued) | | |
| 3 | Exhibit 155 | Universal Fund II | 31 | 3 | NUMBER | DESCRIPTION | PAGE |
| 4 | | Financial Result | | 4 | Exhibit 177 | E-mail correspondence | 248 |
| 5 | | August 2010 | | 5 | | 4-17-13, Re: Other PG items | |
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| 7 | | Structure for GPL | | 7 | | | |
| 8 | | TF-PA098465 - 098467 | | 8 | | | |
| 9 | Exhibit 157 | E-mail correspondence | 108 | 9 | | | |
| 10 | | 10-21-14, Re: Paths and other | | 10 | | | |
| 11 | | info you requested | | 11 | | | |
| 12 | | TF-PA 454508 - 454014 | | 12 | | | |
| 13 | Exhibit 158 | Wells Fargo, WellsOne | 125 | 13 | | | |
| 14 | | Account | | 14 | | | |
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| 16 | Exhibits 159-161 | (Not marked or identified.) | | 16 | | | |
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| 18 | | 7-18-14, Re: Debt Sale wire | | 18 | | | |
| 19 | | requests | | 19 | | | |
| 20 | | TF-PA 359539 - 359551 | | 20 | | | |
| 21 | Exhibit 163A | E-mail correspondence | 220 | 21 | | | |
| 22 | | 9-24-12, Re: Plain Green | | 22 | | | |
| 23 | | Audit Questions | | 23 | | | |
| 24 | | TF-PA 351208 - 351217 | | 24 | | | |
| 25 | Exhibit 163B | Think Finance - SOX | 224 | 25 | | | |
| | | Process Documentation, 5.3.0 | | | | | |
| | | Daily Settlement | | | | | |
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| | Exhibit 164 | E-mail correspondence | 134 | | | | |
| | | 7-26-12, Re: Weekly Package | | | | | |
| | | GPLP00209657 - 00209727 | | | | | |
| | Exhibit 165A | VPC Monthly Package | 153 | | | | |
| | | Checklist Produced in | | | | | |
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| Page 6 | | | | Page 8 | | | |
| 1 | EXHIBITS | | | 1 | PROCEEDINGS | | |
| 2 | (continued) | | | 2 | THE VIDEOGRAPHER: We are now on the | | |
| 3 | NUMBER | DESCRIPTION | PAGE | 3 | record for the videotaped deposition of Linda | | |
| 4 | Exhibit 165B | E-mail correspondence | 154 | 4 | Rogenski. The time is 9:06 a.m., April 18, 2018. | | |
| 5 | | 6-21-13, Re: GPLS Monthly | | 5 | In the matter of the Commonwealth of Pennsylvania, | | |
| 6 | | Package, May 2013 | | 6 | et al, vs. Think Finance, Civil Action | | |
| 7 | | GPLP00007224 | | 7 | No. 14-7139-JCJ. Being held in the United States | | |
| 8 | Exhibit 166A | E-mail correspondence | 187 | 8 | District Court for the Eastern District of | | |
| 9 | | 6-6-13, Re: (Near Final) | | 9 | Pennsylvania. | | |
| 10 | | Tribe Financials | | 10 | The court reporter is Christy Sievert, and | | |
| 11 | | TF-PA 368104 | | 11 | the videographer is Gus Phillips. Both are | | |
| 12 | Exhibit 166B | Plain Green Lending | 187 | 12 | representatives of Kaplan Leaman and Wolfe Court | | |
| 13 | | Financial Results, May 2013 | | 13 | Reporters. | | |
| 14 | | Produced in Native Format | | 14 | Will counsel please state their | | |
| 15 | | TF-PA 368105 | | 15 | appearances for the record. | | |
| 16 | Exhibit 166C | Mobiloans Lending | 187 | 16 | MR. ACKELSBERG: Irv Ackelsberg, | | |
| 17 | | Financial Results, May 31, 2013 | | 17 | special counsel for the Commonwealth of | | |
| 18 | | Produced in Native Format | | 18 | Pennsylvania. | | |
| 19 | | TF-PA 3668106 | | 19 | MR. MIRARCHI: Saverio Mirarchi, for | | |
| 20 | Exhibit 166D | Great Plains Lending, LLC | 187 | 20 | the Commonwealth of Pennsylvania. | | |
| 21 | | Financial Results, May 2013 | | 21 | MR. GROGAN: John Grogan, also for the | | |
| 22 | | Produced in Native Format | | 22 | Commonwealth. | | |
| 23 | | TF-PA 368107 | | 23 | MR. DAUGHERTY: Andrew Daugherty, on | | |
| 24 | Exhibit 166E | E-mail correspondence | 207 | 24 | behalf of National Credit Adjusters. | | |
| 25 | | 6-12-13, Re: May Financials | | 25 | MR. HAWS: Matthew Haws, on behalf of | | |
| | | TF-PA 434714 - 434715 | | | | | |
| | Exhibits 167-172 | (Not marked or identified.) | | | | | |
| | Exhibit 173 | E-mail correspondence | 233 | | | | |
| | | 9-13-12, Re: Plain Green | | | | | |
| | | Audit Questions | | | | | |
| | | TF-PA 323902 - 323910 | | | | | |
| | Exhibits 174-175 | (Not marked or identified.) | | | | | |
| | Exhibit 176 | E-mail correspondence | 238 | | | | |
| | | 4-10-13, Re: PGL Financial | | | | | |
| | | support for December 2012 | | | | | |
| | | TF-PA 535853 - 535854 | | | | | |

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TF App. 0048
TF App. 0801

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|---|---|
| <p style="text-align: right;">Page 9</p> <p>1 the Victory Park defendants.</p> <p>2 MR. SHAPIRO: Dan Shapiro, for the</p> <p>3 Victory Park defendants. And Scott Zeminck, the</p> <p>4 general counsel of Victory Park, on the telephone</p> <p>5 with us as well.</p> <p>6 MR. SHELTON: Matt Sheldon, for the</p> <p>7 Think Finance defendants.</p> <p>8 MR. BOUGHRUM: Jonathan Boughrum, for</p> <p>9 Ken Rees.</p> <p>10 MR. SCHEFF: Richard Scheff, for Linda</p> <p>11 Rogenski.</p> <p>12 LINDA ROGENSKI</p> <p>13 having been first duly sworn,</p> <p>14 testified as follows:</p> <p>15 EXAMINATION</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Good morning, Ms. Rogenski. And is it</p> <p>18 Rogenski or Rogenski?</p> <p>19 A. It's Rogenski.</p> <p>20 Q. Rogenski. Okay.</p> <p>21 I introduced myself to you before. I'm</p> <p>22 Irv Ackelsberg, and I'm with -- representing the</p> <p>23 Commonwealth of Pennsylvania. And you understand</p> <p>24 this is litigation against your former employer,</p> <p>25 Think Finance?</p> | <p style="text-align: right;">Page 11</p> <p>1 and answers. And, you know, I'll be asking</p> <p>2 questions. You -- you then answer. And then</p> <p>3 your -- my questions, your answers are going to be</p> <p>4 in a transcript that the court reporter here is</p> <p>5 going to be preparing at the end, a written</p> <p>6 transcript. Do you understand that?</p> <p>7 A. Yes.</p> <p>8 Q. And that it's possible that that transcript</p> <p>9 could be used by any of the parties in this case</p> <p>10 over the course of the -- the proceedings in this --</p> <p>11 in this lawsuit. Okay?</p> <p>12 A. Yes.</p> <p>13 Q. Now, it's not just -- as you see, there's</p> <p>14 lots of lawyers in the room. And so from time to</p> <p>15 time, there may be an objection. Your lawyer may</p> <p>16 object, but also some of these -- the other lawyers</p> <p>17 representing the other parties may insert an</p> <p>18 objection. They're objecting to my question. What</p> <p>19 you need to understand is that unless your lawyer</p> <p>20 directs you not to answer that specific question,</p> <p>21 you still have to answer the question, even though</p> <p>22 lawyers have objected. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. All right. So the court reporter is going</p> <p>25 to be typing -- well, not just my questions, not</p> |
| <p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And various other -- other</p> <p>3 defendants.</p> <p>4 Ms. Rogenski, have you ever been deposed</p> <p>5 before?</p> <p>6 A. One time.</p> <p>7 Q. Okay. And was that in a personal matter or</p> <p>8 related to your job?</p> <p>9 A. Personal matter.</p> <p>10 Q. Okay. And what kind of a case was that?</p> <p>11 A. A car accident.</p> <p>12 Q. Okay. So you might have some -- how long</p> <p>13 ago was that?</p> <p>14 A. It was in my early 20s.</p> <p>15 Q. Okay.</p> <p>16 A. So a long time ago.</p> <p>17 Q. So -- okay. So -- so I'm sure your lawyer</p> <p>18 has gone over, like, how this all works, and you've</p> <p>19 got a -- a feel already for how this is going to</p> <p>20 happen, but just to clarify that you do understand</p> <p>21 what's going on here, I need to just run through a</p> <p>22 few preliminaries.</p> <p>23 And the first is -- is just to confirm</p> <p>24 with you that the way this -- the way this</p> <p>25 proceeding works is that it's a series of questions</p> | <p style="text-align: right;">Page 12</p> <p>1 just your answers, but all the objections.</p> <p>2 Everything that happens here on the record is going</p> <p>3 to be recorded, and that's the official -- the</p> <p>4 official transcript. Okay?</p> <p>5 A. Okay.</p> <p>6 Q. And because the written transcript, rather</p> <p>7 than the videotape that -- that is being prepared,</p> <p>8 is going to be the official record, we really need</p> <p>9 you to -- to give us verbal responses to all the</p> <p>10 questions. So nods or shakes or shrugs, those</p> <p>11 things don't get -- make -- that's hard for the</p> <p>12 court reporter to -- to record. So there may be a</p> <p>13 moment when I say, "Is that a yes?" And, you know,</p> <p>14 it -- please forgive me. It's not intended to be</p> <p>15 disrespectful. It's just that we need -- we need</p> <p>16 verbal responses to everything. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. Alrighty. Another sort of ground rule is</p> <p>19 that if you don't understand my question, it's</p> <p>20 perfectly fine to say, "I don't understand the</p> <p>21 question," and then I'll try to rephrase it. If you</p> <p>22 don't know the answer to the question, you can --</p> <p>23 that's perfectly fine too. You can just tell me, "I</p> <p>24 don't know the answer to that."</p> <p>25 Now, the -- the whole thing here is just --</p> |

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|---|--|
| <p>1 period passes, you're not sharing anything with 2 anyone.</p> <p>3 MR. ACKELSBURG: Exactly.</p> <p>4 MR. SCHEFF: Thank you.</p> <p>5 MR. ACKELSBURG: Dan, can we move on, 6 or is there anything else you need to clarify on the 7 record?</p> <p>8 I would say to -- to counsel that given 9 that -- that there are these -- that there's this 10 other -- this other proceeding that's going on, and 11 if -- you should talk to me if -- if you're 12 concerned about -- I mean, I -- you know, I want to 13 make sure that I'm getting the right information 14 from creditors' committee counsel. If there's -- if 15 there's some disputes there, I certainly don't want 16 to do anything inconsistent with my obligations 17 under -- under the confidential --</p> <p>18 MR. SCHEFF: We understand that.</p> <p>19 MR. ACKELSBURG: Yeah.</p> <p>20 MR. SHAPIRO: For the moment -- and we 21 will be in touch with you on this. For the moment, 22 please don't share this outside of this case. And 23 we'll be in touch with you on this document to let 24 you know whether that -- our position has changed on 25 that or -- or not.</p> | <p>1 counsel for the creditors' committee as to what the 2 agreements with Hunton have been as to the sharing 3 of documents. And so before you share any 4 documents, I would just ask you to confer with 5 myself or confer with Hunton Williams to make sure 6 that everyone is on the same page.</p> <p>7 MR. ACKELSBURG: I think I've already 8 said that I -- that I would do that.</p> <p>9 MR. SHAPIRO: That's fine. Thank you.</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. So -- sorry, Ms. Rogenski, for the -- for 12 the lawyer distractions, but let's go -- you know, 13 now it's back to you.</p> <p>14 So this started as an inquiry from Victory 15 Park to Chris Lutes, right? Or --</p> <p>16 A. That's what it appears to be.</p> <p>17 Q. Okay. And then it -- it's an inquiry 18 where -- where an investor is -- is asking for the 19 mechanics: How is it that Think Finance has actual 20 control over the -- the tribal bank accounts, right? 21 That's what. . .</p> <p>22 A. That's what it appears to be asking.</p> <p>23 Q. Okay. And so then Chris refers that to you 24 for you to help them understand how that actually 25 works?</p> |
| Page 122 | Page 124 |
| <p>1 MR. ACKELSBURG: But with regard to 2 other documents, I can tell you that just -- there 3 was a representation made to me by -- by counsel for 4 the creditors' committee that there is an 5 understanding between him and Hunton Williams 6 that -- that documents marked confidential in our 7 case could be shared.</p> <p>8 Now, I have not -- I have not shared 9 anything at this point, but I -- I'm trying to 10 remember what -- what was said. There certainly was 11 nothing explained in terms of any difference between 12 "confidential" or "confidential, attorneys' eyes 13 only." And so since nothing has been exchanged, I 14 would just ask you to clarify what --</p> <p>15 MR. SHAPIRO: That's fair.</p> <p>16 MR. ACKELSBURG: Yeah.</p> <p>17 MR. SHAPIRO: So until we've had a 18 chance to do that, though, you won't share any of 19 these documents?</p> <p>20 MR. ACKELSBURG: Yes, I -- I promise 21 that.</p> <p>22 MR. SHAPIRO: Okay.</p> <p>23 MR. SHELDON: And let me just state 24 for the record that I -- I think at least in some 25 instances, there's been some confusion between</p> | <p>1 A. Yes.</p> <p>2 Q. Okay. And as I understand, your answer is 3 that the control that -- that Think Finance finance 4 department has over the accounts titled in the name 5 of the tribal entities is not through the account 6 contract -- the account agreements themselves, but 7 rather, through some administrative -- separate 8 administrative agreement that Think has with Wells 9 Fargo at this point in time?</p> <p>10 A. Access to the administrative portal.</p> <p>11 Q. And what does that mean, "administrative 12 portal"?</p> <p>13 A. That when you do online banking with Wells 14 Fargo, you are required to use a product they call 15 CEO, which is their client electronic something. 16 And that's where all of your accounts are housed and 17 that's where you set any kind of limits, where you 18 put positive pay or you say who's authorized to -- 19 to set up a wire or release a wire, all that -- all 20 that type of information, and to look at account 21 balances in detail.</p> <p>22 Q. And so the -- the criteria with regard to 23 access in -- in the various accounts that were 24 administered through the CEO portal, that was 25 determined by agreement between Think Finance and</p> |

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| <p>1 Wells Fargo?</p> <p>2 MR. SHELDON: Object to form.</p> <p>3 A. Yes, I would say that was an agreement with</p> <p>4 Think Finance -- it was Think Finance's CEO portal,</p> <p>5 yes.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. So we previously -- well, strike that.</p> <p>8 I'm going to show you one another</p> <p>9 document, and then I think it will be a good time to</p> <p>10 break for lunch.</p> <p>11 A. Are we finished with this one, sir?</p> <p>12 Q. Yes. For the time being, yes.</p> <p>13 (Exhibit No. 158 marked.)</p> <p>14 MR. SCHEFF: What number is this?</p> <p>15 MR. ACKELSBURG: 158.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. We're looking at a bank statement from</p> <p>18 Wells Fargo with regard to the Plain Green</p> <p>19 collection account; am I right?</p> <p>20 A. Correct.</p> <p>21 Q. And this is from January of 2014?</p> <p>22 A. Yes.</p> <p>23 Q. And the address that appears to be the</p> <p>24 mailing address for the account is the office of</p> <p>25 Think Finance. Am I right?</p> | <p>1 A. Yes, they did.</p> <p>2 Q. And did they have -- so -- and was that</p> <p>3 true for all three of the tribes?</p> <p>4 A. No. Only Plain Green had accounts at Wells</p> <p>5 Fargo.</p> <p>6 Q. Okay. And with regard to Plain Green, they</p> <p>7 had access. Did -- did the tribes themselves, as</p> <p>8 far as you know, have the ability -- I'm sorry,</p> <p>9 we're just talking about Plain Green. Did Plain</p> <p>10 Green have the ability, itself, to go into the</p> <p>11 portal and wire money without Think Finance's</p> <p>12 involvement?</p> <p>13 A. Without looking back at the specifics on</p> <p>14 the -- the setup, I don't know the answer. It does</p> <p>15 take two people, one to set up, one to release.</p> <p>16 Q. Okay. But -- so --</p> <p>17 A. Typically, we would set them up, and they</p> <p>18 would go in and release.</p> <p>19 Q. And when they release, would they be doing</p> <p>20 that through the portal?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So it -- so in a typical wire</p> <p>23 transfer, it would have required a setup on the</p> <p>24 Think Finance side, and then an actual release from</p> <p>25 the Plain Green side?</p> |
| Page 126 | Page 128 |
| <p>1 A. That's the address on the -- on the report.</p> <p>2 Q. And is -- was that the procedure for</p> <p>3 monthly bank statements, that Wells would send --</p> <p>4 we're talking about Plain Green at the moment --</p> <p>5 would send the bank statements to Think Finance?</p> <p>6 A. I don't know if they mailed these or if we</p> <p>7 went online and printed them out.</p> <p>8 Q. Okay. But they were -- what we're looking</p> <p>9 at here, TF-PA-454501, is an example of a bank</p> <p>10 statement that -- during the period of time that</p> <p>11 Wells was the bank handling the Plain Green</p> <p>12 accounts, this is the way it was reported out by</p> <p>13 Wells Fargo: Plain Green, LLC, collection account,</p> <p>14 in care of -- well, with an address of the Think</p> <p>15 Finance office?</p> <p>16 A. That's correct.</p> <p>17 Q. And we're looking at the collection</p> <p>18 account. Am I right that the funding account would</p> <p>19 have been done the same way?</p> <p>20 A. Without seeing it, but I would say yes,</p> <p>21 because they were all under the Think Finance CEO</p> <p>22 umbrella.</p> <p>23 Q. And the tribes did not have access to</p> <p>24 the -- to the CEO portal at -- at Wells Fargo, did</p> <p>25 they?</p> | <p>1 A. That would be correct.</p> <p>2 Q. Okay. All done through the Wells portal?</p> <p>3 A. That would be correct.</p> <p>4 Q. Okay. And how did the movement of money</p> <p>5 work with regard to Great Plains Lending?</p> <p>6 A. It changed over time. For the most part,</p> <p>7 they handled most of the their wires on their own.</p> <p>8 We would do the setup, and -- or they would do the</p> <p>9 setup, and then they would release. Meaning, Great</p> <p>10 Plains sometimes set up their own wires and released</p> <p>11 them, and sometimes we set them up, and they release</p> <p>12 them.</p> <p>13 Q. So there were times when Great Plains would</p> <p>14 release wires that Think Finance was not -- not</p> <p>15 playing a role?</p> <p>16 A. Yes.</p> <p>17 Q. And did that include transfers to Great --</p> <p>18 to GPLS?</p> <p>19 A. I wouldn't know without looking at some of</p> <p>20 the transactions, but I would say no.</p> <p>21 Q. Okay. So what kinds of transactions could</p> <p>22 Great Plains Lending do out of their -- their</p> <p>23 accounts -- and we're talking about the funding and</p> <p>24 collection accounts, right?</p> <p>25 A. Yes.</p> |

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| <p style="text-align: right;">Page 129</p> <p>1 Q. Okay. So what was the extent of Great 2 Plains Lending's ability to move money in and out of 3 the funding or collections account by themselves 4 without Think Finance? 5 A. They were their accounts. They could move 6 anything they wanted to move. 7 Q. Your previous answer said, though, that 8 they wouldn't have -- they wouldn't have done 9 anything on their own with regard to transfers to 10 GPLS. 11 A. Not to my knowledge, because we always 12 coordinated that with them. Gave them the amounts, 13 and they would confirm them and then do the wires. 14 Q. Okay. So you were involved in some fashion 15 at least with regard -- "you," I mean the Think 16 Finance finance people -- were involved in any -- in 17 any wire transfer that involved GPLS? 18 A. Yes. 19 Q. What about with Mobiloans? 20 A. Mobiloans, at different points in time, it 21 was different. The ultimate, I think, ending 22 position was that we would set up the wires, notify 23 them, and they would release them. 24 Q. Okay. And you mentioned that the other two 25 tribal entities other than Plain Green did not --</p> | <p style="text-align: right;">Page 131</p> <p>1 Q. Were there situations where the Think 2 Finance finance people were waiting to get the 3 attention of the tribe to release, and it took a 4 while for that to happen? 5 A. Yes. 6 Q. Okay. How often did that happen? 7 A. I can't even give you a percentage. It was 8 just occasionally. 9 Q. Were there -- as between the three tribes, 10 were -- were there -- was there a tribe that was -- 11 I'm not sure what word to use -- delinquent or -- or 12 difficult for the -- for the Think Finance people in 13 terms of getting -- getting the proper release? 14 A. I would say Plain Green, because they 15 had -- you know, they were in a remote location and 16 had weather issues and things at times. 17 Q. So what would happen if -- let's say -- 18 now, did you -- did you need -- let's say you want 19 to make -- it's Plain Green, and there's money 20 sitting in the collections account, and you want to 21 transfer the 99 percent to GPLS. Right? And that's 22 at Citibank, right? 23 A. Yes. 24 Q. So were there -- so I want to be clear in 25 what -- what kind of a situation we're talking</p> |
| <p style="text-align: right;">Page 130</p> <p>1 their accounts were not in -- in Wells Fargo, right? 2 A. Correct. 3 Q. Did -- well, did the banks that the other 4 tribes use have an administrative portal similar to 5 Wells' CEO function? 6 A. I am -- I do not know. 7 Q. Okay. Because that was more on the 8 treasury side? 9 A. No. Just because we had the -- we had the 10 CEO portal -- being Think Finance owned the CEO 11 portal relationship with Wells Fargo, and we brought 12 the Plain Green tribes in under our umbrella for 13 ease of administration. And the other two tribes 14 had their own banks, and I don't know how they had 15 their stuff set up. They added us to have access to 16 view and access to set up wires. 17 Q. Okay. 18 A. "Us" meaning various people on the Think 19 Finance team. 20 Q. What would -- were there ever a 21 circumstance where -- that you know, where Think 22 Finance set up a wire, and -- and the tribal entity 23 did not release? 24 A. I can't remember a specific time. That's 25 not to say it never happened.</p> | <p style="text-align: right;">Page 132</p> <p>1 about. Would that include situations where you and 2 Think Finance, in its capacity as the administrative 3 agent for VPC, is trying to get Plain Green to 4 release a wire that you've set up for the transfer 5 to GPLS for its 99 percent share? Would that be the 6 kind of context that -- that you're talking about 7 where there would be some -- some delay in getting a 8 response back from Plain Green? 9 MR. SHAPIRO: Object to form. 10 A. That could happen. 11 BY MR. ACKELSBURG: 12 Q. Okay. And so what was the procedure for -- 13 you know, in the situation where -- was there a way 14 that the wire could be released without the tribe 15 giving the okay? 16 A. I'm sure there were occasions where the 17 wire was released prior to receiving okay from the 18 tribe when the wire cutoff time was approaching or 19 going to pass. Generally, if they couldn't release 20 their wires, they would, in e-mail, tell us -- or in 21 phone call, tell us, "It's okay. Go ahead and 22 release that for us. We can't get into the office." 23 Q. Okay. And -- and were there times you 24 couldn't even get the e-mail back, and that you just 25 had to get -- had to get the wire to GPLS on your</p> |

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| <p>1 inception to date, the money that's been transferred</p> <p>2 to the tribe.</p> <p>3 Q. I see. That's inception to date. Okay.</p> <p>4 So in -- over the first two years of the program,</p> <p>5 that's the total amount of cash that was paid over</p> <p>6 to Plain Green?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then what's the "loan</p> <p>9 receivable" line mean?</p> <p>10 A. This loan receivable would be the -- the</p> <p>11 1 -- their 1 percent balance of the whole program.</p> <p>12 The loans -- the -- they own all loans, but they're</p> <p>13 only showing 1 percent on their balance sheet.</p> <p>14 Q. Okay. What -- I'm just curious, what --</p> <p>15 what does that mean that they -- they own all the</p> <p>16 loans, but only 1 percent?</p> <p>17 A. They -- we show the 1 percent because</p> <p>18 they've sold off participations in 99 percent of the</p> <p>19 loans. So we could break this into two lines and</p> <p>20 show here's 100 percent, here's the 99 percent that</p> <p>21 they sold participations in. Would get you down to</p> <p>22 the same number. We just show the 1 percent.</p> <p>23 Q. Well, I'm just curious about the way you</p> <p>24 said that. You said, "They own all the loans, but</p> <p>25 we only reflect 1 percent." What do you mean "they</p> | <p>1 wire and payment clearing. So that's just cash</p> <p>2 that's clearing through the banks.</p> <p>3 Q. Okay. And then you have -- in the -- under</p> <p>4 "Liabilities," the -- the "accounts payable and</p> <p>5 accrued expenses," which it says, "Payables to</p> <p>6 TailWind and TCDS," is -- is that -- that's just a</p> <p>7 point in time, the -- the payables that -- that</p> <p>8 exist in that point in time?</p> <p>9 A. That should be the sum of the numbers over</p> <p>10 here.</p> <p>11 Q. Over where?</p> <p>12 A. On May -- on the -- on the "Income</p> <p>13 Statement" tab for May.</p> <p>14 Q. Okay.</p> <p>15 A. Without a calculator, I don't know, but</p> <p>16 it's -- it should be close to that number.</p> <p>17 Q. Okay. And then the "legal reserve," what's</p> <p>18 that? That's pursuant to the contract, right?</p> <p>19 A. That was pursuant to the contract. Just a</p> <p>20 reserve they were required to have.</p> <p>21 Q. And that's money sitting in an account</p> <p>22 somewhere pursuant to the contract?</p> <p>23 A. Yes. It would be in this cash up here</p> <p>24 somewhere.</p> <p>25 Q. Now, what about "notes payable to Haynes,"</p> |
| Page 202 | Page 204 |
| <p>1 owned all the loans"?</p> <p>2 A. They -- say they own the loans because</p> <p>3 they -- they're the ones that created the loans.</p> <p>4 They're their loans. They manage them, they collect</p> <p>5 all the money on them, regardless of the fact that</p> <p>6 they sold participations off in them. They manage</p> <p>7 those loans. They're their loans.</p> <p>8 Q. They manage them through you, right?</p> <p>9 Through Think Finance?</p> <p>10 MR. SCHEFF: Object to the form.</p> <p>11 A. I don't know -- I mean, they're involved in</p> <p>12 the management of them. They're authorizing, saying</p> <p>13 that the loans are made or not made.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. Okay. I'm just curious what you meant.</p> <p>16 "Accountants receivable," what is that?</p> <p>17 A. Well, that says, "Reimbursement of expenses</p> <p>18 from GPLS and their service fee."</p> <p>19 Q. Is that a cumulative number, or is that</p> <p>20 just for a one month. . .</p> <p>21 A. That's a point in time. The balance sheet</p> <p>22 is a point in time.</p> <p>23 Q. Okay. Same thing with "accounts</p> <p>24 receivable"?</p> <p>25 A. Yes. And that's -- you see that's two-day</p> | <p>1 what's that about?</p> <p>2 A. That is for Plain Green. I think we talked</p> <p>3 about earlier that the Haynes -- Haynes -- there was</p> <p>4 an agreement between Haynes and -- and Plain Green</p> <p>5 tribe that they would lend them money. This was the</p> <p>6 balance at a point in time.</p> <p>7 Q. Now, we looked at an earlier point in time</p> <p>8 where the money that Haynes was lending to Plain</p> <p>9 Green to fund the loans was coming from Think</p> <p>10 Finance, and that -- right?</p> <p>11 A. That's a separate -- that's a separate --</p> <p>12 MR. SCHEFF: Object to the form.</p> <p>13 A. That's a separate contract between Think</p> <p>14 Finance and Haynes.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. Well, so it wouldn't even show up on -- it</p> <p>17 wouldn't show up on this report?</p> <p>18 A. The -- the part between Think and Haynes?</p> <p>19 Q. Yes.</p> <p>20 A. No, because these are Plain Green's</p> <p>21 financials.</p> <p>22 Q. Okay. Do you know if at this point in</p> <p>23 time, the money that Haynes was lending to the tribe</p> <p>24 was still coming from Think Finance?</p> <p>25 A. I believe it --</p> |

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| <p>1 MR. SCHEFF: Object to the form.</p> <p>2 Go ahead.</p> <p>3 A. I believe it was.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Okay. And then it says, "Notes payable to</p> <p>6 the tribe," a million dollars. What's that?</p> <p>7 A. There was -- there was a -- a point in time</p> <p>8 somewhere in this window, in '13, that the actual</p> <p>9 Chippewa Cree wanted to put some excess cash they</p> <p>10 had into their Plain Green structure to lend on</p> <p>11 loans and to earn some extra interest on. That was</p> <p>12 theirs.</p> <p>13 Q. Okay.</p> <p>14 A. So another capital -- another financing</p> <p>15 source.</p> <p>16 Q. And then Line 11, "Other payables," there's</p> <p>17 a notes that says, "Intercept debt sale</p> <p>18 payments/reserves." So explain to us that line.</p> <p>19 A. Okay. So that would -- that would be --</p> <p>20 and so that would be any other -- it's what it says,</p> <p>21 it's Intercept debt sale payments or reserves. I'm</p> <p>22 not sure how to explain it any -- any better than</p> <p>23 that. Yeah, I mean, I'm just not sure how to</p> <p>24 explain that. Intercept is the ACH processor.</p> <p>25 Q. Now ordinarily, when I've looked at balance</p> | <p>1 them in conformity with GAAP to the best we can.</p> <p>2 They're not -- the program financials themselves are</p> <p>3 not audited. So I can't state that they were</p> <p>4 independently audited and noted that they were under</p> <p>5 GAAP. These would go in -- these would go --</p> <p>6 provided to the tribes, and they would combine them</p> <p>7 with their operations, and then theirs should be</p> <p>8 prepared in GAAP.</p> <p>9 Q. Okay. And -- and without -- without</p> <p>10 spending a lot of time on the Mobiloans and the</p> <p>11 Plain Greens, can -- can we agree that -- that they</p> <p>12 were done in accordance with the same protocol that</p> <p>13 you've described with regard to Plain Green?</p> <p>14 A. Yes.</p> <p>15 MR. SHELTON: Counsel --</p> <p>16 MR. ACKELSBURG: Yeah. Yes. We're</p> <p>17 near a break here.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. I want to -- we'll end with a document that</p> <p>20 I've identified as 166-E. We'll end -- I mean,</p> <p>21 until the break. There's -- there's a little bit</p> <p>22 more.</p> <p>23 (Exhibit No. 166-E marked.)</p> <p>24 MR. SHELTON: I think the witness</p> <p>25 previously said she was hoping to take a break after</p> |
| Page 206 | Page 208 |
| <p>1 sheets for lenders, I see, like, a provision for</p> <p>2 loan loss. I don't see that here. Do you know why?</p> <p>3 A. That was part of the agreements, that</p> <p>4 the -- the tribe would -- the tribe didn't have to</p> <p>5 absorb -- actually, I have to look at the agreement</p> <p>6 to get the specifics. I don't remember the</p> <p>7 specifics. But --</p> <p>8 Q. But they weren't going to incur -- because</p> <p>9 Think Finance was essentially incurring the risk of</p> <p>10 loss on -- on bad loans; am I right?</p> <p>11 MR. SHELTON: Object to form.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. You're familiar with the contracts, right?</p> <p>14 A. Yes.</p> <p>15 Q. Yeah. And that was your understanding of</p> <p>16 the contracts, correct?</p> <p>17 MR. SHELTON: Object to form.</p> <p>18 A. Yes.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Now, what is -- I know you told us that</p> <p>21 with regard to the income statements, the -- the</p> <p>22 accounting was done in accordance with GAAP,</p> <p>23 G-A-A-P. Would that be true of the balance sheet as</p> <p>24 well?</p> <p>25 A. These are the program financials. We do</p> | <p>1 the last exhibit. How long are you going to --</p> <p>2 MR. ACKELSBURG: Yes. Well, we</p> <p>3 already heard from the -- we only have five minutes</p> <p>4 left on the -- on the tape, so I -- I'm sorry you</p> <p>5 missed that. So I said we're going to -- he says</p> <p>6 break in five, so I'm just going to --</p> <p>7 MR. SHELTON: No, I know, you're going</p> <p>8 to be no more than five minutes.</p> <p>9 MR. ACKELSBURG: Yes. Yes, before a</p> <p>10 break. Yes.</p> <p>11 A. (Reviews document.)</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. So let me just ask a -- just a few -- a few</p> <p>14 brief questions. So you saw that in the previous</p> <p>15 e-mail, we -- Bob Peterson was sending to Chris</p> <p>16 Lutes all of the -- the tribal financials together.</p> <p>17 You see that, right?</p> <p>18 A. Yes.</p> <p>19 Q. And then six days later, Chris Lutes is</p> <p>20 sending to various people on the e-mail the Great</p> <p>21 Plains Lending financials that had been sent to --</p> <p>22 previously to Chris Lutes, right?</p> <p>23 A. That appears so.</p> <p>24 Q. Okay. So I'm just -- my question is just</p> <p>25 to kind get a sense of the -- of the protocol and</p> |

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Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

**AFFIDAVIT OF CHRISTOPHER LUTES IN SUPPORT OF DEBTORS' MOTION FOR
SUMMARY JUDGMENT OF CERTAIN VIRGINIA AND TEXAS CLAIMS**

I, Christopher Lutes, having been duly sworn on oath this 27th day of July 2018 state as follows:

1. I am over 21 years of age and am competent to testify to the statements set forth in this affidavit. The statements set forth in this affidavit are true and correct to the best of my knowledge, information, and belief based on my personal knowledge.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949) (collectively, the "Debtors").

2. On May 3, 2018, I was deposed, in person, under oath (the "Deposition"). A true and correct copy of excerpts from the official transcript of the Deposition are attached hereto as Exhibit A (the "Transcript").

3. I adopt, restate and incorporate the excerpts from the Deposition, as recorded in the Transcript, as my statements in support of the Debtors' *Motion for Summary Judgment of Certain Virginia and Texas Claims*.

4. If called upon, I could and would testify to the facts contained herein and the statements made at the Deposition as recorded in the Transcript.

Executed on this 27th day of July 2018, in the County of Tarrant, Texas

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



Christopher Lutes

Christopher Lutes

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| <p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p>COMMONWEALTH OF PENNSYLVANIA * BY ATTORNEY GENERAL JOSH * SHAPIRO, * Plaintiff, * * VS. * Civil Action * No. 14-7139-JCJ THINK FINANCE, INC., et al., * Defendants. *</p> <p>*****</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF CHRISTOPHER LUTES MAY 3, 2018 *****</p> <p>DEPOSITION of CHRISTOPHER LUTES, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 3rd day of May, 2018, from 9:03 a.m. to 5:13 p.m., before Christy R. Sievert, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the Fort Worth Club, 306 West 7th Street, Fort Worth, Texas 76102, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p> | <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued)</p> <p>2 COUNSEL FOR THINK FINANCE, INC.:</p> <p>3 MR. MATTHEW S. SHELDON 4 Goodwin Procter, LLP 5 901 New York Avenue, NW 6 Washington, D.C. 20001 7 Phone: 202-346-4000 8 E-mail: msheldon@goodwinprocter.com</p> <p>9 COUNSEL FOR VICTORY PARK CAPITAL:</p> <p>10 MR. DANIEL P. SHAPIRO 11 MR. MATTHEW W. HAWS 12 Katten Muchin Rosenman, LLP 13 525 W. Monroe Street 14 Chicago, Illinois 60661 15 Phone: 312-902-5622 16 E-mail: daniel.shapiro@kattenlaw.com 17 matthew.haws@kattenlaw.com</p> <p>18 COUNSEL FOR NATIONAL CREDIT ADJUSTERS:</p> <p>19 MR. PATRICK DAUGHERTY 20 Van Ness Feldman, LLP 21 1050 Thomas Jefferson Street, NW 22 Seventh Floor 23 Washington, D.C. 24 Phone: 202-298-1874 25 E-mail: pod@vnf.com</p> <p>ALSO PRESENT: WILL RAINE, Videographer KEVIN BYERS</p> |
| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 COUNSEL FOR THE COMMONWEALTH OF PENNSYLVANIA:</p> <p>3 MR. IRV ACKELSBURG 4 Langer, Grogan & Diver, PC 5 1717 Arch Street, Suite 4130 6 Philadelphia, Pennsylvania 19103 7 Phone: 215-320-5701 8 E-mail: iackelsberg@langergrogan.com</p> <p>9 MR. SAVERIO "SAM" MIRARCHI 10 Senior Deputy Attorney General 11 Bureau of Consumer Protection 12 1600 Arch Street, Suite 300 13 Philadelphia, Pennsylvania 19103 14 Phone: 215-560-2445 15 E-mail: smirarchi@attorneygeneral.gov</p> <p>16 COUNSEL FOR CHRISTOPHER LUTES: 17 MR. RICHARD L. SCHEFF 18 Montgomery, McCracken, Walker & Rhoads, LLP 19 123 South Broad Street 20 Philadelphia, Pennsylvania 19109 21 Phone: 215-772-7502 22 E-mail: rscheff@mmwr.com</p> <p>23 COUNSEL FOR KENNETH E. REES: 24 MR. DAVID F. HERMAN 25 Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street Philadelphia, Pennsylvania 19109 Phone: 215-772-7502 E-mail: dherman@mmwr.com</p> | <p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2-3</p> <p>4 Exhibits..... 5-7</p> <p>5 Proceedings..... 8</p> <p>6 CHRISTOPHER LUTES:</p> <p>7 Examination by Mr. Ackelsberg..... 9</p> <p>8 Changes and Signature..... 304-305</p> <p>9 Reporter's Certification..... 306-307</p> |

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| 1 | PROCEEDINGS | | |
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| 2 | THE VIDEOGRAPHER: We are now on the | | |
| 3 | record for the video deposition of Chris Lutes. The | | |
| 4 | time is 9:03 a.m. on May 3, 2018. | | |
| 5 | This is the matter of the Commonwealth of | | |
| 6 | Pennsylvania, et al., vs. Think Finance, | | |
| 7 | Incorporated, et al., Civil Action No. 14-7139-JCJ. | | |
| 8 | This is being held in the United States District | | |
| 9 | Court for the Eastern District of Pennsylvania. | | |
| 10 | The court reporter is Christy Sievert. | | |
| 11 | The videographer is Will Raine. Both are | | |
| 12 | representatives of Kaplan, Leaman & Wolfe Court | | |
| 13 | Reporter. | | |
| 14 | And now would counsel please state your | | |
| 15 | appearances for the record. | | |
| 16 | MR. ACKELSBERG: For the Commonwealth | | |
| 17 | of Pennsylvania, Irv Ackelsberg. Also with me, | | |
| 18 | temporarily out in the hall, is Saverio Mirarchi | | |
| 19 | with the attorney general's office. | | |
| 20 | MR. SCHEFF: Irv, could you | | |
| 21 | identify -- could you -- | | |
| 22 | MR. ACKELSBERG: Yes. This is Kevin | | |
| 23 | Byers, our consultant. | | |
| 24 | MR. SCHEFF: Thank you. | | |
| 25 | Richard Scheff for Christopher Lutes. | | |

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| <p style="text-align: right;">Page 9</p> <p>1 MR. HERMAN: David Herman for Kenneth 2 E. Rees. 3 MR. SHELTON: Matt Sheldon for the 4 Think Finance defendants. 5 MR. SHAPIRO: Dan Shapiro for the 6 Victory Park defendants. And Matt Haws, who's in 7 the hall right now, will be joining us shortly. 8 MR. DAUGHERTY: Patrick Daugherty on 9 behalf of National Credit Adjusters. 10 CHRISTOPHER LUTES 11 having been first duly sworn, 12 testified as follows: 13 EXAMINATION 14 BY MR. ACKELSBURG: 15 Q. Good morning, Mr. Lutes. It's very nice to 16 meet you, finally. 17 A. Thank you. Likewise. 18 Q. So we have to go through, as you know, a 19 few preliminaries just to make sure that, first of 20 all, you understand the procedure and what's 21 happening here. Have you been deposed before? 22 A. No, I have not. 23 Q. Okay. So I'm sure your lawyer has gone 24 through this, but I need to do it myself. 25 Basically, the way we're going to proceed, it's a</p> | <p style="text-align: right;">Page 11</p> <p>1 Q. Yeah, the nods aren't going to be picked 2 up. And if I -- and if I say, "Did you mean yes," 3 it's not -- I'm not trying -- it's not an act of 4 disrespect. We just have to get it onto the -- 5 A. Understood. 6 Q. -- onto the record. 7 Right. So nods or shrugs don't work. We 8 need verbal. 9 If you don't know the answer, just -- 10 that's fine, "I don't know." If you don't 11 understand the question, please tell me, and I'll do 12 my best. I might ask you, well, what about the 13 question don't you understand, but we can -- we can 14 work together to clarify the question so we can 15 get -- we can get an answer from you to a question 16 that you understand. 17 A. Uh-huh (affirmative response). 18 Q. Let's see. What else haven't I covered? 19 We're going to take breaks. This will be a long day 20 for all of us. We'll take many breaks. If you need 21 a break, just tell us. 22 A. Okay. 23 Q. And I would just ask you to finish your 24 answer to the pending question, and then we can go 25 off the record and. . .</p> |
| <p style="text-align: right;">Page 10</p> <p>1 series -- it's questions and answers. I ask a 2 question, you answer as best as you can. There may 3 be objections by your lawyer. And I can assure you 4 there will be objections from your lawyer and maybe 5 from other lawyers. But the way this -- the way 6 this works in a deposition as opposed to a trial is 7 that after the objections, you still have to answer 8 the question unless the -- your lawyer specifically 9 directs you not to answer the question. And, you 10 know, I'm guessing we're not going to be doing a 11 whole lot of that today, but it's -- but there will 12 be plenty of objections. 13 And so it's important that we not talk 14 over one another. The court reporter has to get 15 everything down. My question, the lawyer's 16 objection, your answer, the whole thing. But -- do 17 you understand that? 18 A. Yeah, I do. 19 Q. Okay. And we are being videotaped today, 20 but the official -- the record of this deposition is 21 the written transcript that the court reporter is 22 preparing, and the reason I stress that is that 23 nonverbal responses aren't picked up. So, you know, 24 if I say, "Is that a yes or a no," I mean -- 25 A. I shouldn't nod my head.</p> | <p style="text-align: right;">Page 12</p> <p>1 A. Got it. 2 Q. And, finally, is there any reason, such as 3 illness, hearing disorder, medication, lack of 4 sleep, things like that, that would get in the way 5 of you giving this deposition your full attention 6 today? 7 A. No. 8 Q. Okay. So we are going to go just a little 9 bit into your background, and I'm -- 10 A. Sure. 11 Q. -- going to try to breeze through this. My 12 understanding is that you're a CPA. Is that right? 13 A. Yes, I am, in the state of Arizona. 14 Q. Okay. And is that -- and your 15 certification is current? 16 A. Yes, it is. 17 Q. Okay. And am I right that at some point, 18 you were the CEO -- the CFO, the chief financial 19 officer, for Silicon Valley Bank? 20 A. Yes, I was. 21 Q. And where is that located? 22 A. That's located in Santa Clara, California. 23 Q. And during what period of time were you 24 with the bank? 25 A. I was with the bank from 1994 through 2001,</p> |

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| <p style="text-align: right;">Page 161</p> <p>1 also -- I shouldn't say "we." The lawyers had 2 introduced the concept of you've got to wait two or 3 three days -- I think it might be two, maybe 4 three -- from the point -- 5 MR. SHELDON: Let me just put in an 6 objection here and just say to the extent that your 7 answer requires revealing any information that was 8 communicated to you by Think's lawyers or Think's 9 outside counsel, please don't give -- provide that 10 answer. If you have any questions about it, we can 11 step out in the hall. To the extent your answer is 12 just conveying what ended up in a document, you 13 know, please talk about what ended up in a document, 14 not what -- what was communicated to you by Think's 15 in-house or outside counsel. Okay? 16 A. Okay. Let me just finish the thought. I 17 know this was a little long-winded, but I think it 18 was an important point and that's why I'm taking my 19 time here. 20 Is that with each of the tribes, for tax 21 purposes, they held on to a hundred percent of the 22 originations of the loans for two to three business 23 days before they sold the participation to the GPLS 24 entity. 25 As you can appreciate, thousands of</p> | <p style="text-align: right;">Page 163</p> <p>1 account that GPLS set up to serve that function. Am 2 I right? 3 MR. SCHEFF: Object to the form; 4 misstates the testimony. 5 Answer the question if you can. 6 A. I wouldn't phrase it that way. There was a 7 reserve that if the tribe wanted to use it for 8 originating loans or for other purposes, it had, 9 because it was meant -- capital meant to kind of 10 cover them in the situation that if GPLS stopped 11 buying, that covered the two to three days' worth of 12 loans that -- that they would have originated. Each 13 of the tribes could have had alternative sources for 14 funding the loans. I don't have privy to that 15 information. 16 BY MR. ACKELSBURG: 17 Q. Well, they could have, but you're -- you're 18 not aware of them ever having -- having supplied any 19 outside funding capital to the funding of Mobiloans 20 loans -- 21 MR. SCHEFF: Object to the form. 22 You can answer the question. 23 BY MR. ACKELSBURG: 24 Q. -- loans, do you? 25 A. I'm not aware of -- I just don't -- I don't</p> |
| <p style="text-align: right;">Page 162</p> <p>1 customer loans could be originated on a daily basis 2 by each of those tribes. They were concerned that 3 they would originate two to three days' worth of 4 loan and GPLS would say: We're not going to buy it. 5 And, suddenly, they're on the hook for a hundred -- 6 holding a hundred percent of those loans and being 7 capital constrained on a pretty immediate time 8 space. 9 So what the lawyer -- what the concept 10 was, was to introduce that GPLS would advance two to 11 three days in the form of a reserve that in the 12 event that it said, no, we're not going to buy any 13 more, there was already a reserve to cover the two 14 to three days' worth of loans originated. 15 BY MR. ACKELSBURG: 16 Q. Okay. That's what I was -- 17 A. So I'm sorry it was so longwinded, but 18 that's -- I wanted to get that out there. It was 19 really for the -- from my perspective, the tax and 20 the delay in being able to sell same day. 21 Q. So I just -- I think I understand your 22 answer. 23 So I was asking how the loans were funded 24 in the first place, and it sounds like with 25 Mobiloans, the answer was there was a reserve</p> | <p style="text-align: right;">Page 164</p> <p>1 have enough knowledge to answer that question. I 2 don't know. 3 Q. You sat in, it sounds like, on two -- two 4 sales -- sales visits, one at the Chippewa Cree and 5 one at Mobiloans. You went with Jason and Michelle 6 or people from the product side, right? So this 7 happened twice, right? 8 MR. SCHEFF: Object to the form. 9 You can answer the question. 10 A. From my perspective, I wouldn't call those 11 sales pitches. The Chippewa Cree was not a sales 12 pitch, as I think we discussed earlier. We might 13 have already signed the term sheet or we might have 14 been in the process. It was more of just an onsite 15 visit to meet our business partners. 16 BY MR. ACKELSBURG: 17 Q. Do you remember -- do you remember the 18 term -- do you remember the -- you were at the 19 initial Mobiloans trip, though. And I'm wondering, 20 during that trip, do you remember someone on the 21 Think side explaining that the Tunica would not have 22 to lay out any money? 23 A. I -- I don't -- I was at that presentation. 24 I don't specifically recall, but it's -- yeah, I 25 don't -- I don't recall specifically. I'm sure what</p> |

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| <p style="text-align: right;">Page 165</p> <p>1 we would have -- would have explained to them is</p> <p>2 with the reserve concept, that they shouldn't be</p> <p>3 concerned from a capital perspective that they would</p> <p>4 be originating loans that they would not be able to</p> <p>5 sell at least 90 percent participation interest to</p> <p>6 GPLS.</p> <p>7 Q. Okay. Thank you.</p> <p>8 Do you remember the term "turnkey"?</p> <p>9 A. I would not have used it from a finance</p> <p>10 perspective. So I --</p> <p>11 Q. I'm not suggesting it's a financial term.</p> <p>12 I'm asking whether --</p> <p>13 MR. SCHEFF: Let him finish his</p> <p>14 answer.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. -- you remember the term being used by</p> <p>17 other members of the team: Michelle or Jason, for</p> <p>18 example?</p> <p>19 MR. SCHEFF: Object to the form.</p> <p>20 You can answer the question if you can.</p> <p>21 A. No, I don't specifically recall.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. You have seen it -- you have seen marketing</p> <p>24 material where Think's services as a service</p> <p>25 provider are described as a turnkey, haven't you?</p> | <p style="text-align: right;">Page 167</p> <p>1 A. From my perspective, things that the tribe</p> <p>2 would be responsible for besides just originating</p> <p>3 the loan and, you know, reviewing, you know, the --</p> <p>4 the credit decisioning suggestions or scores that we</p> <p>5 gave them for their approval and understanding, and,</p> <p>6 you know, the ACH things out of their accounts and</p> <p>7 all of that stuff, they would be responsible for</p> <p>8 the -- the customer support and the collections.</p> <p>9 We did not handle the collections in any</p> <p>10 way. We helped provide monitoring services to help</p> <p>11 them monitor the outsourced customer support and</p> <p>12 collections, but that ultimately was responsible for</p> <p>13 the tribes. I'm sure I'm probably forgetting some</p> <p>14 other operational things, but by no means did we</p> <p>15 ever provide everything.</p> <p>16 MR. ACKELSBURG: I'm going to break</p> <p>17 very soon. I know we're all hungry. I'm just</p> <p>18 trying to get to a good cutoff point.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. So with Mobiloans, the funding of the loans</p> <p>21 up front was done through a -- the reserve account,</p> <p>22 right, that you described?</p> <p>23 MR. SHAPIRO: Object to form.</p> <p>24 MR. SCHEFF: Object to the form.</p> <p>25 A. That's not how I would phrase my answer.</p> |
| <p style="text-align: right;">Page 166</p> <p>1 MR. SCHEFF: Object to the form.</p> <p>2 You can answer the question.</p> <p>3 A. I would say that from the services we</p> <p>4 provide, the marketing services, the licensing of</p> <p>5 the technology, in essence, yes, what we do is</p> <p>6 turnkey. But there were certainly obligations that</p> <p>7 the tribes as the originating lender would still be</p> <p>8 a hundred percent responsible for that we were not</p> <p>9 involved in at all. So --</p> <p>10 BY MR. ACKELSBURG:</p> <p>11 Q. Like what?</p> <p>12 MR. SHELTON: Hold on. Can we stop</p> <p>13 for a second, please? Irv, I realize that you're</p> <p>14 frustrated with some of the witness's answers and</p> <p>15 you don't like some of the answers because of your</p> <p>16 tone and you don't like of the length of answers.</p> <p>17 But at probably a dozen different points through</p> <p>18 this deposition already, which is only halfway</p> <p>19 through, you've cut the witness off. And I'd just</p> <p>20 ask you to please let the witness finish and wait</p> <p>21 until the end. The witness is allowed to give the</p> <p>22 full answer that he believes is necessary for any of</p> <p>23 your questions. Okay?</p> <p>24 BY MR. ACKELSBURG:</p> <p>25 Q. My question was, like what?</p> | <p style="text-align: right;">Page 168</p> <p>1 There was a reserve account established, like I said</p> <p>2 previously, to cover the two to three days' worth of</p> <p>3 originations that they provided. Whether they chose</p> <p>4 to use some of those funds to help them originate</p> <p>5 loans or whether they used other third-party</p> <p>6 capital, I'm not aware of.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. Okay. And the same was true of Great</p> <p>9 Plains Lending?</p> <p>10 A. Yes, I believe so.</p> <p>11 Q. And what about Plain Green?</p> <p>12 A. Plain Green, that was the -- as you're</p> <p>13 aware, the first transaction that we entered into.</p> <p>14 I don't think the reserve concept was introduced</p> <p>15 with them. Like I said, I know that they had an</p> <p>16 existing lending relationship with Encore or</p> <p>17 whoever. They had other capital means. So, no,</p> <p>18 there was no reserve -- initial -- initial reserve</p> <p>19 concept, as I recall. Whether we amended that</p> <p>20 later, I know that there was suggestions, but I</p> <p>21 can't recall whether that actually happened.</p> <p>22 MR. ACKELSBURG: Okay. This is a good</p> <p>23 time to break.</p> <p>24 THE VIDEOGRAPHER: We are off the</p> <p>25 record at 12:41 p.m.</p> |

| Page 169 | Page 171 |
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| <p>1 (Break taken, 12:41 p.m. to 1:22 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record at 1:22 p.m.</p> <p>4 BY MR. ACKELSBURG:</p> <p>5 Q. Before we broke, Mr. Lutes, we were talking</p> <p>6 about the -- how the loans got funded in the first</p> <p>7 instance, specifically with regard to Plain Green,</p> <p>8 and I want to show you a few agreements and ask</p> <p>9 for -- for your comments.</p> <p>10 A. Sure.</p> <p>11 MR. ACKELSBURG: So the first one, I</p> <p>12 am going to -- I am going to identify it as Exhibit</p> <p>13 P-244.</p> <p>14 (Exhibit No. 244 marked.)</p> <p>15 A. (Reviews document.)</p> <p>16 Okay.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Okay. Does this -- does this refresh your</p> <p>19 recollection at all about how the loans got funded</p> <p>20 in the first instance in the beginning of the Plain</p> <p>21 Green relationship?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 A. As I've discussed before, I'm not sure</p> <p>24 whether there were any other capital arrangements</p> <p>25 for Plain Green to help fund loans, but I am</p> | <p>1 with the funding of certain installment loan</p> <p>2 programs." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So you -- you do remember there</p> <p>5 being a credit facility that Plain Green, LLC, had</p> <p>6 with Haynes Investments in the beginning?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you remember anything about how</p> <p>9 it came to be?</p> <p>10 A. No. I -- I don't recall those initial</p> <p>11 conversations regarding Plain Green, Haynes or even</p> <p>12 us and how we were involved with Haynes.</p> <p>13 Q. Okay. And let me show you another</p> <p>14 agreement.</p> <p>15 MR. ACKELSBURG: This one is 245.</p> <p>16 (Exhibit No. 245 marked.)</p> <p>17 A. (Reviews document.)</p> <p>18 Okay.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Do you remember this agreement?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And why don't you explain to me what the</p> <p>23 purpose of this agreement was?</p> <p>24 A. The purpose of this agreement was for us to</p> <p>25 lend money to Haynes Investment.</p> |
| Page 170 | Page 172 |
| <p>1 familiar with the Haynes Investment to Plain Green,</p> <p>2 LLC.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. And so at the inception of the product,</p> <p>5 Mr. Haynes, through this entity Haynes Investment,</p> <p>6 provided \$2 million in lending capital to the tribe;</p> <p>7 am I right, to -- to Plain Green, LLC?</p> <p>8 MR. SCHEFF: Object to the form.</p> <p>9 A. I'm not sure I would use the term "lending</p> <p>10 capital." Working capital for the -- for the</p> <p>11 program, yeah.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Okay. Well, in fact, it had to be used to</p> <p>14 fund loans. It couldn't be used for any other</p> <p>15 purpose; isn't that what the -- wasn't that your</p> <p>16 understanding of what the purpose of this was? I'm</p> <p>17 not asking for your legal opinion.</p> <p>18 A. No, no, I'm just -- I wasn't a hundred</p> <p>19 percent certain whether it was required just for</p> <p>20 funding the loans or whether it could be used for</p> <p>21 other working capital related to the -- the loan</p> <p>22 program.</p> <p>23 Q. Okay. I see.</p> <p>24 You'll see that under the Recital B, "The</p> <p>25 credit facility will be used to assist the borrower</p> | <p>1 Q. So that Haynes Investment could lend it to</p> <p>2 Plain Green, right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And, in fact, I recall it was either</p> <p>5 the deposition of -- it was one of the Lindas where</p> <p>6 she kind of described there actually was a bank</p> <p>7 account that was a -- was a Haynes bank account and</p> <p>8 a Plain Green bank account where -- and a -- and a</p> <p>9 Think -- I forgot which entity it was which --</p> <p>10 MR. SCHEFF: Let him finish his</p> <p>11 question.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. I forgot what the name of the Think entity</p> <p>14 was, but there actually were -- there was actually a</p> <p>15 tran- -- on occasion, a transfer of money</p> <p>16 facilitated by the finance department staff from the</p> <p>17 Think Finance account to the Haynes account to the</p> <p>18 Plain Green funding account. Right? And so you're</p> <p>19 familiar that that was -- that there was actually a</p> <p>20 Think Finance operation that corresponded to these</p> <p>21 agreements?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. What was the purpose of Think</p> <p>24 Finance giving money to Haynes to give to the tribe?</p> <p>25 MR. SCHEFF: Object to the form.</p> |

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Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

**AFFIDAVIT OF KENNETH REES IN SUPPORT OF DEBTORS' MOTION FOR
SUMMARY JUDGMENT OF CERTAIN VIRGINIA AND TEXAS CLAIMS**

I, Kenneth Rees, having been duly sworn on oath this 2nd day of July 2018 state as follows:

1. I am over 21 years of age and am competent to testify to the statements set forth in this affidavit. The statements set forth in this affidavit are true and correct to the best of my knowledge, information, and belief based on my personal knowledge.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949) (collectively, the "Debtors").

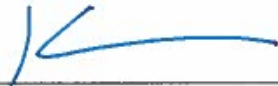
2. On May 8, 2018, I was deposed, in person, under oath (the "Deposition"). A true and correct copy of excerpts from the official transcript of the Deposition are attached hereto as Exhibit A (the "Transcript").

3. I adopt, restate and incorporate the excerpts from the Deposition, as recorded in the Transcript, as my statements in support of the Debtors' *Motion for Summary Judgment of Certain Virginia and Texas Claims*.

4. If called upon, I could and would testify to the facts contained herein and the statements made at the Deposition as recorded in the Transcript.

Executed on this 27th day of July 2018, in the County of Tarrant TX.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



Kenneth Rees

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Kenneth Rees

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|--|---|
| <p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA</p> <p>COMMONWEALTH OF PENNSYLVANIA * BY ATTORNEY GENERAL JOSH * SHAPIRO, * Plaintiff, * * VS. * Civil Action * No. 14-7139-JCJ THINK FINANCE, INC., et al., * Defendants. *</p> <p>*****</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF KENNETH REES MAY 8, 2018</p> <p>*****</p> <p>DEPOSITION of KENNETH REES, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 8th day of May, 2018, from 9:08 a.m. to 5:46 p.m., before Christy R. Sievert, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the Fort Worth Club, 306 West 7th Street, Fort Worth, Texas 76102, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p> | <p style="text-align: right;">Page 3</p> <p style="text-align: center;">A P P E A R A N C E S (continued)</p> <p>COUNSEL FOR VICTORY PARK CAPITAL:</p> <p>MR. DANIEL P. SHAPIRO MR. MATTHEW W. HAWS Katten Muchin Rosenman, LLP 525 W. Monroe Street Chicago, Illinois 60661 Phone: 312-902-5622 E-mail: daniel.shapiro@kattenlaw.com matthew.haws@kattenlaw.com</p> <p>COUNSEL FOR NATIONAL CREDIT ADJUSTERS:</p> <p>MR. PATRICK DAUGHERTY Van Ness Feldman, LLP 1050 Thomas Jefferson Street, NW Seventh Floor Washington, D.C. Phone: 202-298-1874 E-mail: pod@vnf.com</p> <p>ALSO PRESENT: GUS PHILLIPS, Videographer</p> |
| <p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>COUNSEL FOR THE COMMONWEALTH OF PENNSYLVANIA:</p> <p>MR. IRV ACKELSBURG Langer, Grogan & Diver, PC 1717 Arch Street, Suite 4130 Philadelphia, Pennsylvania 19103 Phone: 215-320-5701 E-mail: iackelsberg@langergrogan.com</p> <p>MR. SAVERIO "SAM" MIRARCHI Senior Deputy Attorney General Bureau of Consumer Protection 1600 Arch Street, Suite 300 Philadelphia, Pennsylvania 19103 Phone: 215-560-2445 E-mail: smirarchi@attorneygeneral.gov</p> <p>COUNSEL FOR KENNETH E. REES:</p> <p>MR. RICHARD L. SCHEFF Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street Philadelphia, Pennsylvania 19109 Phone: 215-772-7502 E-mail: rscheff@mmwr.com</p> <p>COUNSEL FOR THINK FINANCE, INC.:</p> <p>MR. MATTHEW S. SHELDON Goodwin Procter, LLP 901 New York Avenue, NW Washington, D.C. 20001 Phone: 202-346-4000 E-mail: msheldon@goodwinprocter.com</p> | <p style="text-align: right;">Page 4</p> <p style="text-align: center;">I N D E X</p> <p style="text-align: right;">PAGE</p> <p>Appearances..... 2-3</p> <p>Exhibits..... 5-6</p> <p>Proceedings..... 7</p> <p>KENNETH REES:</p> <p>Examination by Mr. Ackelsberg..... 8</p> <p>Changes and Signature..... 345-346</p> <p>Reporter's Certification..... 347-348</p> |

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| 4 | Exhibit 273 | LendIt Fintech, Ken Rees | 43 |
| 5 | Exhibit 274 | Think Finance Business Plan, April 2013 TF-PA 683403 - 683418 | 46 |
| 6 | Exhibit 275 | E-mail correspondence 4-6-15, Re: GP article TF-PA 308918 - 308920 | 64 |
| 7 | Exhibit 276 | E-mail correspondence 11-30-12, Re: Presentation For Abu Dhabi Investors TF-PA 677353 - 677371 | 135 |
| 8 | Exhibit 277 | IPO Roadshow Presentation Breakout #1 TF-PA 670288 - 670295 | 141 |
| 9 | Exhibit 278 | E-mail correspondence 8-26-13, Re: Encore Video TF-PA 677068 | 200 |
| 10 | Exhibit 279 | Term Sheet for Think Finance - Chippewa Cree Transaction | 208 |
| 11 | Exhibit 280 | E-mail correspondence 10-24-13, Re: BMO TF-PA 606626 - 606627 | 226 |
| 12 | Exhibit 281 | E-mail correspondence 12-13-13, Re: Selected Expense Report TF-PA 674488 - 674489 | 229 |
| 13 | Exhibit 282 | Memorandum, 2-17-11 TF-PA 710233 - 710236 | 280 |
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| 7 | Exhibit 287 | E-mail correspondence 8-9-13, Re: GPL Volume TF-PA 680605 - 680606 | 305 |
| 8 | Exhibit 288 | E-mail correspondence 9-26-13, Re: Call to Bob from Tunica-Biloxi Tribal Chairman Marshall Pierite TF-PA 258168 | 315 |
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| 10 | Exhibit 290 | LinkedIn, Think Finance | 325 |
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| Page 7 | | | |
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| 1 | THE VIDEOGRAPHER: We are now on the | | |
| 2 | record for the videotaped deposition of Kenneth | | |
| 3 | Rees. The time is 9:08 a.m., May 8, 2018, in the | | |
| 4 | matter of the Commonwealth of Pennsylvania vs. Think | | |
| 5 | Finance Incorporated, et al., Case No. 14-7139-JCJ, | | |
| 6 | being held in the United States District Court for | | |
| 7 | the Eastern District of Pennsylvania. | | |
| 8 | The court reporter is Christy Sievert. | | |
| 9 | The videographer is Gus Phillips. Both are | | |
| 10 | representatives of Kaplan, Leaman & Wolfe Court | | |
| 11 | Reporting. | | |
| 12 | Will counsel please state their | | |
| 13 | appearances for the record. | | |
| 14 | MR. ACKELSBERG: Irv Ackelsberg for | | |
| 15 | the Commonwealth of Pennsylvania. | | |
| 16 | MR. GROGAN: John Grogan, also for the | | |
| 17 | Commonwealth. | | |
| 18 | MR. MIRARCHI: Saverio Mirarchi for | | |
| 19 | the Commonwealth of Pennsylvania. | | |
| 20 | MR. DAUGHERTY: Patrick Daugherty on | | |
| 21 | behalf of National Credit Adjusters. | | |
| 22 | MR. HAWS: Matthew Haws on behalf of | | |
| 23 | the Victory Park defendants. | | |
| 24 | MR. SHAPIRO: Dan Shapiro for the | | |
| 25 | Victory Park defendants. | | |

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| 1 | MR. SHELDON: Matt Sheldon for the | | |
| 2 | Think Finance defendants. | | |
| 3 | MR. SCHEFF: Richard Scheff for Ken | | |
| 4 | Rees. | | |
| 5 | KENNETH REES | | |
| 6 | having been first duly sworn, | | |
| 7 | testified as follows: | | |
| 8 | EXAMINATION | | |
| 9 | BY MR. ACKELSBERG: | | |
| 10 | Q. Mr. Rees, you have been deposed before? | | |
| 11 | A. I have. | | |
| 12 | Q. Okay. So I'm sure you understand how this | | |
| 13 | works, but just to confirm that you do know the | | |
| 14 | ground rules, I want to just go over a few things | | |
| 15 | that I'm sure are familiar to you. | | |
| 16 | You see that there's a videographer. | | |
| 17 | There's also a court reporter. The official record | | |
| 18 | of what happens today is the -- is going to be the | | |
| 19 | written transcript. The reason I tell you that is | | |
| 20 | just to caution you that gestures -- verbal | | |
| 21 | responses -- don't register on the -- on the written | | |
| 22 | record, so we need -- we need verbal responses from | | |
| 23 | you. | | |
| 24 | And I'll do my best -- and the other thing | | |
| 25 | about the written record is that it's very hard for | | |

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| <p style="text-align: right;">Page 157</p> <p>1 A. So I'll walk through the history as I</p> <p>2 remember it. We were notified by FBD that they were</p> <p>3 going to be terminating the program. The program</p> <p>4 was representing a very significant part of the</p> <p>5 revenue and net income of the business.</p> <p>6 We assembled the executive team together</p> <p>7 that weekend to look at a wide variety of things to</p> <p>8 do. Continued to grow the -- the existing nonbank</p> <p>9 product, adding new ones. We looked at</p> <p>10 opportunities in the UK. We looked at new product</p> <p>11 opportunities even outside of credit. And sort of</p> <p>12 moved down a path of -- and including a tribal lend,</p> <p>13 which is something we hadn't really evaluated in the</p> <p>14 past. So we took all of those potential business</p> <p>15 opportunities, began looking into them.</p> <p>16 We actually ended up doing all of those</p> <p>17 things. You know, we bought a company in the UK.</p> <p>18 We launched a prepaid debit card. We launched a</p> <p>19 rent-to-own product. We enhanced the direct</p> <p>20 consumer product to grow that more aggressively.</p> <p>21 And then -- but as we were evaluating all the</p> <p>22 alternatives -- I'm sorry if I'm doing too much</p> <p>23 here --</p> <p>24 Q. That's okay.</p> <p>25 A. -- but I'm hoping this provides some of</p> | <p style="text-align: right;">Page 159</p> <p>1 A. I think there were. I don't know that I</p> <p>2 could name any of them, but I'm pretty sure there</p> <p>3 were other entities within the Online Lenders</p> <p>4 Alliance that were licensing technology to tribal</p> <p>5 lenders as well.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Now, the first -- my understanding is the</p> <p>8 first potential partner that the company talked to</p> <p>9 was Butch Webb in South Dakota. Right?</p> <p>10 A. Yes.</p> <p>11 Q. And how did that meeting come to be?</p> <p>12 A. Actually, our -- the founder of the</p> <p>13 company, Mike Stinson, had known another gentleman</p> <p>14 named John Templar, who had known Butch Webb. And</p> <p>15 when -- I -- I know that was the connection. I</p> <p>16 don't know exactly how it was sort of connected up</p> <p>17 that Butch Webb was involved in a tribal lending</p> <p>18 organization. I don't remember that.</p> <p>19 But one thing led to another, and we -- we</p> <p>20 traveled up to North Dakota -- North or South</p> <p>21 Dakota. I think it was North Dakota -- to meet with</p> <p>22 him. We ultimately couldn't get comfortable with</p> <p>23 his -- his business model. It seemed to run</p> <p>24 contrary to what -- you know, what we and outside</p> <p>25 counsel thought was the legally justifiable lending</p> |
| <p style="text-align: right;">Page 158</p> <p>1 what you're looking for.</p> <p>2 We looked at -- at sort of other tribal</p> <p>3 lending businesses. There was a couple of court</p> <p>4 cases at the time that had just been decided in</p> <p>5 favor of the tribes, one in California and one in</p> <p>6 Colorado -- I don't know the -- you know, what names</p> <p>7 those were -- that seemed to specify what it would</p> <p>8 take for a tribal lending entity to have sovereign</p> <p>9 immunity and to not be, you know, subject to state</p> <p>10 law as per the tribal sovereignty would be.</p> <p>11 We looked at other programs that were out</p> <p>12 there. And then based on that, then based on --</p> <p>13 really, you know, based on sort of the evaluation of</p> <p>14 that by all the parties, including the board, we</p> <p>15 decided that it made sense to move forward with</p> <p>16 seeing if we could come up with a suitable tribal</p> <p>17 relationship where we would provide technology and</p> <p>18 services to them, very similar to the way we had</p> <p>19 provided technology and services to the bank.</p> <p>20 Q. And at that point in time, were other of</p> <p>21 your peer organizations -- well, let's say within --</p> <p>22 within the OLA, other than Mark Curry, were there</p> <p>23 other peer members of OLA that were doing business</p> <p>24 under the tribal model?</p> <p>25 MR. SCHEFF: Object to the form.</p> | <p style="text-align: right;">Page 160</p> <p>1 structures and --</p> <p>2 MR. SCHEFF: Stay away from whatever</p> <p>3 counsel told you.</p> <p>4 THE WITNESS: Sorry.</p> <p>5 A. But in -- in any event, we -- I mean, did</p> <p>6 not like the fact that there didn't seem to be an</p> <p>7 arm of the tribe in any way involved with the --</p> <p>8 with the lending operation. So it was -- he was not</p> <p>9 very happy about it, but -- but we told him we</p> <p>10 weren't going to do business with him.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Now, did Claudia Callaway play a role in</p> <p>13 that connection?</p> <p>14 MR. SCHEFF: Just answer the question</p> <p>15 "yes" or "no."</p> <p>16 A. I just don't know.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. Do you -- do you remember if she was</p> <p>19 representing Butch Webb back at that time?</p> <p>20 A. Don't know.</p> <p>21 Q. Or CashCall or . . .</p> <p>22 A. I don't know.</p> <p>23 Q. The -- did Butch Webb have a</p> <p>24 relationship -- now his company was called Western</p> <p>25 Sky, right?</p> |

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| <p style="text-align: right;">Page 161</p> <p>1 A. Yes.</p> <p>2 Q. And did Western Sky have -- have a</p> <p>3 relationship with CashCall at that time, or did that</p> <p>4 happen when you turned him down?</p> <p>5 A. I don't know. He had an operation. My</p> <p>6 recollection, Western Sky was the name. I don't</p> <p>7 know if at that time he already had a relationship</p> <p>8 with -- with CashCall or not.</p> <p>9 Q. I mean,, you do know eventually --</p> <p>10 A. Yes.</p> <p>11 Q. -- he did develop a relationship with</p> <p>12 CashCall, right?</p> <p>13 A. Yes.</p> <p>14 Q. And that was one of your competitors,</p> <p>15 right?</p> <p>16 A. They were an online lender. I don't know</p> <p>17 how much we directly competed with them. They were</p> <p>18 an online lender, though.</p> <p>19 Q. Okay. And then the next -- as I understand</p> <p>20 it, the next tribe that you made contact with was</p> <p>21 the Otoe-Missouria. Right? And that was through</p> <p>22 Mark Curry?</p> <p>23 A. I believe that's correct.</p> <p>24 Q. And I can show this to you if you want to</p> <p>25 see it, but we've seen an e-mail from you to the</p> | <p style="text-align: right;">Page 163</p> <p>1 a lot of business opportunities and were -- one of</p> <p>2 the biggest challenges for launching a product, we</p> <p>3 launched a number of products over the years, is</p> <p>4 getting an URL and getting a trademark that -- that</p> <p>5 you could actually use.</p> <p>6 So we had already gone and looked at a</p> <p>7 whole bunch of different potential names and done</p> <p>8 the trademark searches and found the URLs and bought</p> <p>9 a few. So we had a handful of things that we were</p> <p>10 sort of sitting on. So in order to, you know, help</p> <p>11 them get live, we lice- -- well, not -- we actually</p> <p>12 sold them, I think, the URL so that they could have</p> <p>13 that as the basis for the product.</p> <p>14 BY MR. ACKELSBURG:</p> <p>15 Q. So, in other words, that -- before you</p> <p>16 approached the Otoe-Missouria, you already had a</p> <p>17 website called greatplainslending.com, right?</p> <p>18 A. Yes.</p> <p>19 Q. And --</p> <p>20 A. Actually, I don't know if that's true. I</p> <p>21 know that we began looking for product names and</p> <p>22 URLs. Whether that was completed before we met</p> <p>23 with the Otoe-Missouria, I don't know the exact</p> <p>24 timing of that.</p> <p>25 Q. All right. But the start your engines</p> |
| <p style="text-align: right;">Page 162</p> <p>1 executives, I think it's February 28th, 2011, where</p> <p>2 you say something to the effect of, "Start your</p> <p>3 engines," where -- where you thought it looked like</p> <p>4 the Otoe-Missouria were ready to -- ready to go. Do</p> <p>5 you remember that?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 BY MR. ACKELSBURG:</p> <p>8 Q. I can show -- I can show you the e-mail.</p> <p>9 MR. SCHEFF: Lack of foundation.</p> <p>10 You can answer the question if you can.</p> <p>11 A. I've seen the e-mail and --</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. Okay.</p> <p>14 A. And I -- I think we believed that the</p> <p>15 business relationship was going to happen.</p> <p>16 Q. And, in fact, the e-mail was connected to a</p> <p>17 signed agreement whereby the tribe agreed to acquire</p> <p>18 the website, Plain Green, that -- that Think Finance</p> <p>19 had already -- already owned in terms of the URL,</p> <p>20 right? I mean,, that was the context of that,</p> <p>21 correct?</p> <p>22 MR. SCHEFF: Object to the form.</p> <p>23 You can answer the question.</p> <p>24 A. Yeah, you know, as we talked about when the</p> <p>25 bank relationship was terminated, we were looking at</p> | <p style="text-align: right;">Page 164</p> <p>1 e-mail was at the point where they -- whatever the</p> <p>2 timing of your original meeting with them was, it</p> <p>3 was -- it was at the point where they were saying,</p> <p>4 okay, we'll -- we'll agree to this agreement to</p> <p>5 assume the responsibility and ownership of that --</p> <p>6 of that website, that URL, right?</p> <p>7 MR. SCHEFF: Object to the form; the</p> <p>8 document speaks for itself. An unmarked document</p> <p>9 speaks for itself.</p> <p>10 A. I'm sorry, if you can rephrase the</p> <p>11 question.</p> <p>12 BY MR. ACKELSBURG:</p> <p>13 Q. See, that's the problem. That's the</p> <p>14 problem.</p> <p>15 MR. SCHEFF: Why don't you mark the</p> <p>16 document. Just mark the exhibit as opposed to --</p> <p>17 MR. ACKELSBURG: I'll be happy to.</p> <p>18 MR. SCHEFF: -- talking about it in</p> <p>19 the air.</p> <p>20 MR. ACKELSBURG: That's fine, Richard.</p> <p>21 I don't want to have any misunderstandings.</p> <p>22 MR. SCHEFF: Good.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. This document has already been marked</p> <p>25 Exhibit 124.</p> |

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| <p style="text-align: right;">Page 181</p> <p>1 day, at some point, Victory Park told you that they</p> <p>2 were interested, right?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And so whoever kind of came up with</p> <p>5 the name, either it was Victory Park or Think</p> <p>6 Finance, or together, the concept came up of GPLS to</p> <p>7 be a -- essentially, a replacement investment fund</p> <p>8 for whatever the preexisting one was with regard to</p> <p>9 First Bank of Delaware?</p> <p>10 MR. SHAPIRO: Object.</p> <p>11 MR. SCHEFF: Object to the form.</p> <p>12 MR. SHAPIRO: Object to the form. And</p> <p>13 inconsistent with prior testimony, mischaracterizing</p> <p>14 the testimony.</p> <p>15 A. And, again, the way I remember it, and I</p> <p>16 remember it fairly discreet, there was the Universal</p> <p>17 Fund that Victory Park Capital was an investor in.</p> <p>18 At some point in time, the GPLS fund was established</p> <p>19 and Victory Park was an investor in that fund. I</p> <p>20 don't remember with any specificity how things</p> <p>21 evolved and if they did evolve. I'm sure Chris</p> <p>22 could do a better job than I could about that.</p> <p>23 BY MR. ACKELSBURG:</p> <p>24 Q. Okay. Now, the Great Plains Lending</p> <p>25 labelled product didn't -- didn't happen as you</p> | <p style="text-align: right;">Page 183</p> <p>1 intermediaries in between. As we saw the final</p> <p>2 proposed documents coming from -- from the tribe,</p> <p>3 they had the sort of management company that the</p> <p>4 tribe was using --</p> <p>5 Q. MacFarlane Group?</p> <p>6 A. I don't know which entity it was. It</p> <p>7 was -- it was one that Mark Curry was associated</p> <p>8 with. I don't know if it was The MacFarlane Group</p> <p>9 or anyone else. But -- but there was a business</p> <p>10 entity that we were to be contracting with as</p> <p>11 opposed to directly with the tribal lending entity,</p> <p>12 and we didn't think that was a smart way to do</p> <p>13 business. And the --</p> <p>14 Q. Why not --</p> <p>15 MR. SCHEFF: Let him finish the</p> <p>16 answer, please.</p> <p>17 A. You know, we -- we felt we had a business</p> <p>18 model that, you know, A, it worked well. It had had</p> <p>19 FDIC -- in our minds at least, an FDIC sort of stamp</p> <p>20 of approval on it because it had gone through FDIC</p> <p>21 examination. We wanted to replicate that as much as</p> <p>22 possible. And having another entity where also we</p> <p>23 didn't feel like we'd be working directly with</p> <p>24 that -- that, you know, tribal lending entity, it</p> <p>25 just didn't feel like the right relation- -- I mean,</p> |
| <p style="text-align: right;">Page 182</p> <p>1 thought it was going to happen when you said start</p> <p>2 the engines on February 28, 2011?</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 You can answer the question.</p> <p>5 A. Yes.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Okay. Instead, there was a -- there was a</p> <p>8 switch to a different tribe, the Chippewa Cree in</p> <p>9 Montana, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So what do you remember -- well,</p> <p>12 first of all, what went wrong with the</p> <p>13 Otoe-Missouria and Mark Curry, or whoever you were</p> <p>14 talking with back then, or whoever --</p> <p>15 A. Yeah.</p> <p>16 Q. -- the company was talking with?</p> <p>17 A. You know, the difference between the</p> <p>18 preliminary sort of deal terms that seemed to make</p> <p>19 sense and the final paperwork, we just weren't</p> <p>20 really happy with what we were seeing. At a high</p> <p>21 level, we thought that the -- we believed that the</p> <p>22 way that we worked with the bank, which we felt was</p> <p>23 very stable and a well-functioning structure, was</p> <p>24 such that we had really -- you know, we were the</p> <p>25 service provider for the bank, and there weren't</p> | <p style="text-align: right;">Page 184</p> <p>1 we already walked away from the Butch Webb operation</p> <p>2 because we didn't think that was an appropriate</p> <p>3 way -- you know, we didn't think there was -- they</p> <p>4 had any sovereign rights to lend at all.</p> <p>5 And this, we just thought, was not the</p> <p>6 kind of business relationship that would be a</p> <p>7 stable, longstanding one that we wanted to be part</p> <p>8 of. So we had been continuing to talk to other</p> <p>9 tribes.</p> <p>10 And as you mentioned, I think it was</p> <p>11 Haynes that bound the -- the -- what became the</p> <p>12 Plain Green tribe, the Chippewa Cree tribe, and we</p> <p>13 were sort of in parallel talking with those two --</p> <p>14 two tribes. And, ultimately, we were more</p> <p>15 comfortable with the structure and the relationship</p> <p>16 with the Chippewa Cree than we were with the</p> <p>17 Otoe-Missouria at that time.</p> <p>18 BY MR. ACKELSBURG:</p> <p>19 Q. Where did you get the impression that the</p> <p>20 FDIC had approved of the structure that you had in</p> <p>21 place with First Bank of Delaware?</p> <p>22 A. Well, it had gone through multiple FDIC</p> <p>23 exams.</p> <p>24 Q. How do you know?</p> <p>25 MR. SHELTON: I would just caution</p> |

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| <p style="text-align: right;">Page 185</p> <p>1 again if anything you're going to say would be as a 2 result of being told something by counsel, you know, 3 you can state that for the record, but if it's 4 independent of that, please do testify. 5 A. It was independent. It was from bank -- 6 bank management. 7 BY MR. ACKELSBURG: 8 Q. Like Alonzo? 9 A. Alonzo and Harry Madonna, the chairmen. 10 And they -- I'm sorry, I just lost my train of 11 thought. Excuse me. 12 Yeah, so back to the -- the sort of FDIC 13 oversight. So you've probably seen that at one 14 point in time the FDIC stopped the bank from some of 15 its programs and thought that they exhibited 16 rent-a-bin characteristics. Ours was excluded from 17 that. And we did modify the structure of the 18 relationship with the bank, sort of looking at -- at 19 what the FDIC didn't like about the other 20 transactions. That was actually largely what the 21 bank asked us to do. And then -- and that's when we 22 established the Universal Fund -- for instance. 23 Yeah, Universal Fund --. And the FDIC did -- I 24 think it was two more exams, at least one more exam 25 since that time.</p> | <p style="text-align: right;">Page 187</p> <p>1 So I guess I'd be surprised if the FDIC 2 was unaware of it because they used that same 3 structure and the same -- some of the same 4 investors, at least for the previous program as well 5 as for ours, but I don't know for a fact whether the 6 FDIC didn't know that. 7 Q. Okay. You do know that the government 8 ultimately shutdown First Bank of Delaware, you do 9 know that, right? 10 MR. SCHEFF: Object to the form; lack 11 of foundation. 12 A. I will go ahead an answer the question. 13 They did shut it down, but, again, my 14 understanding is -- 15 BY MR. ACKELSBURG: 16 Q. They did or didn't? 17 A. Oh, actually, did they shut it down? I 18 thought the -- the bank actually sold all the 19 assets. 20 Q. After they were sued by the justice 21 department? 22 A. I don't know that that means they shut them 23 down. 24 MR. SCHEFF: Object to the form; lack 25 of foundation.</p> |
| <p style="text-align: right;">Page 186</p> <p>1 So from our perspective, you know, the 2 bank had been told this is how we think you ought to 3 be working with service providers for credit 4 programs. We made changes specifically based on 5 bank guidance. And then the FDIC looked at it and 6 continued that -- that business until the bank 7 ultimately exited it. 8 So, again, from our perspective, the FDIC 9 had looked at it and thought there was an 10 appropriate relationship for a lender and a service 11 provider to have. So that was -- that was our 12 perspective and why we wanted to heed as close to 13 that structure as possible when working with tribes. 14 Q. Based on your conversations with Alonzo 15 Primus and Harry Madonna, did you have the 16 impression that the FDIC had been informed by them 17 that the invest- -- that the investors in the 18 Universal Fund who was buying the participations 19 were family and friends of the bank leadership? 20 A. The FDIC, my understanding -- and this is 21 really coming from representations from Alonzo and 22 others at -- at the bank, was pretty thorough in its 23 evaluation of these programs, both the program with 24 us and previous programs that the -- that the bank 25 had had.</p> | <p style="text-align: right;">Page 188</p> <p>1 A. Maybe -- maybe they -- I assumed that they 2 were selling assets, there was some value to those 3 assets as an -- as an entity. 4 BY MR. ACKELSBURG: 5 Q. By the way, the -- the loan assets with 6 regard to the ThinkCash program, at the time the 7 bank was selling off its assets, Think Finance 8 already owned all those loan assets; am I right? 9 MR. SCHEFF: Object to the form; lack 10 of foundation. 11 A. So when the -- at the end of the -- when 12 the bank notified us that they wanted us -- they 13 wanted to no longer continue the program, they told 14 us they would stop originating by the end of the 15 year, and they asked us to -- to buy those assets 16 off of their books. And I don't know if -- 17 actually, I -- 18 BY MR. ACKELSBURG: 19 Q. Well, there weren't any -- 20 A. I just don't know. There -- there was a -- 21 they -- you know, their -- and I'm not sure how much 22 the bank retained. It was maybe 2 or 3 percent that 23 they had on their books after they participated out 24 the majority to the Universal Fund --. But at some 25 point in time, as sort of the end of the program,</p> |

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| <p style="text-align: right;">Page 189</p> <p>1 they wanted to get all of those assets off their</p> <p>2 books. And I don't know exactly where those ended</p> <p>3 up. I don't think that Think bought those assets.</p> <p>4 Maybe they did. But I thought they were ultimately</p> <p>5 contributed to -- to another fund.</p> <p>6 Q. The investment fund, right. But that</p> <p>7 investment fund, due to those quirky accounting</p> <p>8 rules back in the Universal -- Universal Fund</p> <p>9 period, those loan assets were on the books of Think</p> <p>10 Finance anyway, right?</p> <p>11 A. I thought you asked --</p> <p>12 MR. SCHEFF: Object to the form; lack</p> <p>13 of foundation.</p> <p>14 You can answer the question.</p> <p>15 A. I thought you asked who bought the -- the</p> <p>16 assets.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. So it might --</p> <p>19 A. I believe the assets were bought by the</p> <p>20 investment fund, not by us.</p> <p>21 Q. And then by virtue of those pesky</p> <p>22 accounting rules, those -- they were actually shown</p> <p>23 on the financial statements of Think Finance as</p> <p>24 assets of the company?</p> <p>25 MR. SCHEFF: Object to the form.</p> | <p style="text-align: right;">Page 191</p> <p>1 don't know. Oftentimes we would do that.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. And he was someone that you would -- you</p> <p>4 trusted and had -- you know, he was involved in the</p> <p>5 First Bank of Delaware product, right?</p> <p>6 MR. SCHEFF: Object to the form.</p> <p>7 A. I mean,, he was -- he was an attorney</p> <p>8 with -- with a reputable law firm and seemed to have</p> <p>9 a lot of experience in, you know, supporting credit</p> <p>10 programs.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. Well, but he's someone you knew and trusted</p> <p>13 already, right?</p> <p>14 MR. SCHEFF: Object to the form.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. As -- as --</p> <p>17 A. I mean,, so you're saying "trusted." I'm</p> <p>18 sorry, there's a lot of attorneys in the room here.</p> <p>19 He is an attorney. He is someone we worked with in</p> <p>20 the past. I'm not sure "trusted" is the word I</p> <p>21 would use for him, but he was a person who had</p> <p>22 experience with us and we knew him and had worked</p> <p>23 with him.</p> <p>24 Q. Specifically, with regard to the</p> <p>25 ThinkCash/First Bank of Delaware product, right?</p> |
| <p style="text-align: right;">Page 190</p> <p>1 A. I certainly wouldn't -- you know, I</p> <p>2 wouldn't characterize accounting rules as pesky. I</p> <p>3 just don't think they're an accurate way to judge</p> <p>4 the contractual relationships that the -- that Think</p> <p>5 had with the entities that it did business with.</p> <p>6 BY MR. ACKELSBURG:</p> <p>7 Q. Okay. Now, did -- did Think Finance when</p> <p>8 it began talking with the Chippewa Cree, did it do</p> <p>9 any due diligence on Steven Haynes, the go-between?</p> <p>10 MR. SCHEFF: Object to the form; lack</p> <p>11 of foundation.</p> <p>12 A. You know, I don't know the answer to that.</p> <p>13 Oftentimes we would do background checks on people</p> <p>14 we work with. That was sort of a common practice.</p> <p>15 I don't know if in that case we did. I know there</p> <p>16 was some -- I mean,, I expect there was some vetting</p> <p>17 of him by the people that worked with him and in how</p> <p>18 we came into contact, I think you said Rick Eckman,</p> <p>19 sort of was the person who was kind of the person</p> <p>20 that put us together.</p> <p>21 And I -- I just don't know exactly what --</p> <p>22 you know, how much background or due diligence was</p> <p>23 done on Haynes. I mean,, because it came from an</p> <p>24 attorney, there might have been a sense that he had</p> <p>25 already been vetted to a certain extent. But I</p> | <p style="text-align: right;">Page 192</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And with regard to the Chippewa</p> <p>3 Cree, it's -- you know, the tribe itself, was there</p> <p>4 any due diligence done by Think with regard to the</p> <p>5 tribe?</p> <p>6 A. I'm sorry, which tribe are we talking</p> <p>7 about?</p> <p>8 Q. Chippewa Cree.</p> <p>9 A. The Chippewa Cree tribe.</p> <p>10 Q. The tribe that Haynes -- Eckman and Haynes</p> <p>11 connected you with.</p> <p>12 A. Yes, it's -- it's not easy to get a lot of</p> <p>13 detailed due diligence on -- on tribal</p> <p>14 organizations. You don't have all the sort of</p> <p>15 filings and stuff that you have with, you know, a</p> <p>16 nontribal company. But we did what we could.</p> <p>17 A lot of it actually came from Haynes.</p> <p>18 Haynes had worked with the Chippewa Cree before.</p> <p>19 And as far as various other tribal organizations he</p> <p>20 had worked with, he seemed to think they were a</p> <p>21 pretty sound business partner. There was certainly</p> <p>22 a real need on the reservation for business</p> <p>23 development, and he felt they'd be a good partner.</p> <p>24 But I think we probably -- it was hard for</p> <p>25 us to do a whole lot of additional due diligence on</p> |

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| <p style="text-align: right;">Page 193</p> <p>1 the Chippewa Cree as a business partner outside of</p> <p>2 what Haynes represented to us.</p> <p>3 Q. And Haynes' business relationship with the</p> <p>4 tribe was in a casino business, right?</p> <p>5 A. I believe he was in a casino business with</p> <p>6 them. I don't know any more details than that. But</p> <p>7 he had worked with them and thought they were good</p> <p>8 business partners.</p> <p>9 Q. Did the company -- did Think Finance do any</p> <p>10 due diligence with regard to the Chippewa Cree's</p> <p>11 prior experience in the lending business?</p> <p>12 A. Well, I knew that they had a lending</p> <p>13 business in the past. It was one of the things that</p> <p>14 made them an attractive business partner because</p> <p>15 they had already had some experience with lending.</p> <p>16 I don't know anything other than the fact that they</p> <p>17 had a product that they -- that they told us that</p> <p>18 they were unhappy with.</p> <p>19 Q. Did you look at the product or look at its</p> <p>20 track record or . . .</p> <p>21 A. I didn't personally.</p> <p>22 Q. Did anybody at Think Finance do that?</p> <p>23 A. I can't speak to that.</p> <p>24 Q. So that's not something that you, as CEO,</p> <p>25 required? That wasn't information that you needed</p> | <p style="text-align: right;">Page 195</p> <p>1 a -- as far as we knew, that was a former business</p> <p>2 relationship. I think it had already ended by the</p> <p>3 time that we had begun discussions with the tribe.</p> <p>4 I'm not certain about that, but that was my</p> <p>5 recollection.</p> <p>6 Q. Hang on just for a second.</p> <p>7 Now, at some point you learned that --</p> <p>8 sorry. At some point Think Finance learned that</p> <p>9 Encore was, in fact, getting a percentage of the</p> <p>10 take from the Plain Green product, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. It's very frustrating.</p> <p>14 Q. Explain. Why was it so frustrating?</p> <p>15 A. We didn't think they had done any value in</p> <p>16 terms of helping the tribe establish a relationship</p> <p>17 with us, yet they were taking what we felt was, you</p> <p>18 know, economic benefits from the tribe and putting</p> <p>19 them into their own pocket for no value add.</p> <p>20 Q. Well -- so make sure I understand this. So</p> <p>21 when you were talking -- let's switch tribes. When</p> <p>22 you were talking to the Otoe-Missouria, you knew</p> <p>23 that there was a nontribal, call it intermediary</p> <p>24 service provider, that -- that you were talking with</p> <p>25 about the possible relationship. You were talking</p> |
| <p style="text-align: right;">Page 194</p> <p>1 in order to make a decision whether this was a good</p> <p>2 partner?</p> <p>3 MR. SCHEFF: Object to the form.</p> <p>4 You can answer the question.</p> <p>5 A. I can say I didn't do that. And I can't</p> <p>6 remember now exactly what due diligence was done on</p> <p>7 that tribe. I can speak to the fact that as a team</p> <p>8 we got comfortable that they would be a good</p> <p>9 business partner, but I just can't speak to exactly</p> <p>10 what was done and how much detail was accomplished.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. To the extent the Chippewa Cree had any</p> <p>13 prior experience in a lending operation, that would</p> <p>14 have been with the service provider being a company</p> <p>15 called Encore, Encore Services, right?</p> <p>16 A. I believe that's true; although, I don't</p> <p>17 know exactly what role Encore played in the previous</p> <p>18 lending business that the tribe had. I remember</p> <p>19 that name in association with the business but not</p> <p>20 what the role was.</p> <p>21 Q. Well, did the -- did Think Finance do any</p> <p>22 due diligence with regard to --</p> <p>23 A. To Encore?</p> <p>24 Q. -- to Encore?</p> <p>25 A. Not that I'm aware of. That -- that was</p> | <p style="text-align: right;">Page 196</p> <p>1 with Mark Curry about whether or not you could</p> <p>2 connect with the Otoe-Missouria, right?</p> <p>3 MR. SCHEFF: Object to the form;</p> <p>4 compound question.</p> <p>5 You can answer whatever question you</p> <p>6 choose.</p> <p>7 A. So, you know, the -- I didn't know all the</p> <p>8 details of how Curry worked with the Otoe, but Curry</p> <p>9 was the intermediary -- intermediary that sort of</p> <p>10 found us as a potential partner for the tribe. So</p> <p>11 they had added some value add there. And, also, we</p> <p>12 knew that they were providing some level of</p> <p>13 consulting to the tribal lending about how to think</p> <p>14 about their economic development on the reservation.</p> <p>15 Neither of those things is true of Encore.</p> <p>16 BY MR. ACKELSBURG:</p> <p>17 Q. Well -- okay. So --</p> <p>18 A. So we just saw no value in what they were</p> <p>19 doing. Whereas -- whereas, Mark Curry -- and we can</p> <p>20 argue about, you know, exactly how much they got.</p> <p>21 I'm not sure exactly I know what it was. But there</p> <p>22 was real value add they provided to the tribe, and</p> <p>23 they should have been compensated in some fashion</p> <p>24 for that.</p> <p>25 Q. But did you care whether or not the</p> |

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Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

AFFIDAVIT OF STEVEN HAYNES IN SUPPORT OF DEBTORS' MOTION FOR SUMMARY JUDGMENT OF CERTAIN VIRGINIA AND TEXAS CLAIMS

I, Steven Haynes, having been duly sworn on oath this 2nd day of July 2018 state as follows:

1. I am over 21 years of age and am competent to testify to the statements set forth in this affidavit. The statements set forth in this affidavit are true and correct to the best of my knowledge, information, and belief based on my personal knowledge.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949) (collectively, the "Debtors").

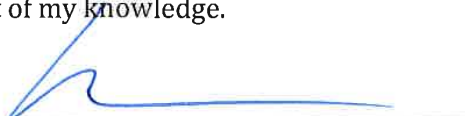
2. On June 26, 2018, I was deposed, in person, under oath (the "Deposition"). A true and correct copy of excerpts from the official transcript of the Deposition are attached hereto as Exhibit A (the "Transcript").

3. I adopt, restate and incorporate the excerpts from the Deposition, as recorded in the Transcript, as my statements in support of the Debtors' *Motion for Summary Judgment of Certain Virginia and Texas Claims*.

4. If called upon, I could and would testify to the facts contained herein and the statements made at the Deposition as recorded in the Transcript.

Executed on this 27th day of July 2018, in the County of Dallas

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



Steven Haynes

Steven Haynes

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| <p style="text-align: right;">Page 1</p> <p>IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA - - - COMMONWEALTH OF : PENNSYLVANIA : Plaintiff : : VS. : CIVIL ACTION NUMBER : 2:14-CV-07139 THINK FINANCE, INC., : ET AL., : Defendants : - - - JUNE 26, 2018 - - - Videotaped deposition of STEVEN HAYNES, was taken pursuant to notice at 1735 Market Street, Philadelphia, Pennsylvania, beginning at or about 8:30 a.m. before Jeannine Cancelliere, Court Reporter and Notary Public and David Levin, Videotape Operator, there being present. KAPLAN, LEAMAN AND WOLFE Registered Professional Reporters 230 S. Broad Street, Suite 1303 Philadelphia, Pennsylvania 19102</p> | <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (continued) 2 3 GOODWIN PROCTER 4 BY: MATTHEW SHELDON, ESQUIRE 901 New York Avenue, NW Washington, D.C. 20001 5 Phone: (202) 346-4000 Representing Think Finance 6 msheldon@goodwinlaw.com 7 8 VAN NESS FELDMAN 9 BY: PATRICK DAUGHERTY, ESQUIRE 1050 Thomas Jefferson Street, NW Washington, D.C. 20007-3877 10 Phone: (202) 298-1800 Representing National Credit 11 Adjusters LLC pod@vnf.com 12 13 14 15 16 17 18 19 20 21 22 23 24</p> |
| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 LANGER, GROGAN & DIVER, P.C. 4 BY: IRV ACKELSBERG, ESQUIRE BY: JOHN J. GROGAN, ESQUIRE 1717 Arch Street, Suite 4130 Philadelphia, Pennsylvania 19103 5 Phone: (215) 320-5701 Representing the Plaintiff 6 jgrogan@langergrogan.com 7 8 9 ATTORNEY GENERAL'S OFFICE 10 BY: SAVERIO MIRARCHI, ESQUIRE 1600 Arch Street, 3rd Floor Philadelphia, Pennsylvania 19103 11 Phone: (215) 560-2445 Representing the Defendant smirarchi@attorneygeneral.gov 12 13 14 MONTGOMERY McCracken BY: RICHARD SCHEFF, ESQUIRE 15 BY: DAVID HERMAN, ESQUIRE 123 South Broad Street Philadelphia, Pennsylvania 19109 16 Phone: (215) 772-7228 Representing Ken Rees rscheff@mmwr.com 17 18 19 KATTEN, MUCHIN, ROSENMAN LLP 20 BY: DANIEL SHAPIRO, ESQUIRE BY: J. MATTHEW HAWS, ESQUIRE 525 W. Monroe Street Chicago, Illinois 60661-3693 21 Phone: (312) 902-5319 Representing Victory Park matthew.haws@kattenlaw.com 22 23 24</p> | <p style="text-align: right;">Page 4</p> <p>1 INDEX 2 - - - 3 STEVEN HAYNES PAGE 4 BY MR. ACKELSBERG 8 5 BY MR. SHELDON 302 6 BY MR. DAUGHERTY 308 7 - - - 8 E X H I B I T S 9 - - - 10 EXHIBIT NO. PAGE 11 Haynes-1 12 12 P-337 20 13 P-338 80 14 P-339 85 15 P-340 123 16 P-341 130 17 P-342 134 18 P-343 135 19 P-344 141 20 P-345 142 21 P-346 147 22 P-347 149 23 P-348 154 24 P-349 164</p> |

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| <p style="text-align: right;">Page 5</p> <p>1 EXHIBITS (continued)</p> <p>2 EXHIBIT NO. PAGE</p> <p>3 P-350 168</p> <p>4 P-351 173</p> <p>5 P-352 187</p> <p>6 P-353 211</p> <p>7 P-354 217</p> <p>8 P-355 219</p> <p>9 P-356 220</p> <p>10 P-357 223</p> <p>11 P-358 233</p> <p>12 P-359 238</p> <p>13 P-360 241</p> <p>14 P-361 243</p> <p>15 P-362 253</p> <p>16 P-363 256</p> <p>17 P-364 259</p> <p>18 P-365 260</p> <p>19 P-366 261</p> <p>20 P-367 266</p> <p>21 P-368 274</p> <p>22 P-369 277</p> <p>23 P-370 281</p> <p>24 P-371 282</p> | <p style="text-align: right;">Page 7</p> <p>1 - - -</p> <p>2 EXAMINATION</p> <p>3 - - -</p> <p>4 BY MR. ACKELSBERG:</p> <p>5 Q. Good morning, Mr. Haynes.</p> <p>6 A. Good morning.</p> <p>7 Q. We just met. My name, again, is Irv</p> <p>8 Ackelsberg, and I am one of the lawyers</p> <p>9 representing the Commonwealth of Pennsylvania</p> <p>10 in this matter.</p> <p>11 Can you state the -- what's</p> <p>12 your home address?</p> <p>13 A. 4215 San Carlos Street, Dallas, Texas.</p> <p>14 Q. Do you have a different business</p> <p>15 address?</p> <p>16 A. I do.</p> <p>17 Q. What's that?</p> <p>18 A. 7515 Lemmon Avenue, Hangar R, Dallas,</p> <p>19 Texas.</p> <p>20 Q. Hangar R, is that in an airport?</p> <p>21 A. It is.</p> <p>22 Q. Why do you have an office in an airport?</p> <p>23 A. Very cheap space.</p> <p>24 Q. Have you been deposed before?</p> |
| <p style="text-align: right;">Page 6</p> <p>1 VIDEOTAPE OPERATOR: We're now</p> <p>2 on the record my name is David Levin. I am</p> <p>3 the videographer employed by On the Record.</p> <p>4 This is a video deposition in the United</p> <p>5 States District Court for the Eastern District</p> <p>6 of Pennsylvania, Civil Action No.</p> <p>7 2:14-CV-07139.</p> <p>8 Today's date is Tuesday, June</p> <p>9 26th, 2018, and the video time is 8:38 a.m.</p> <p>10 This deposition is being held at 1735 Market</p> <p>11 Street, 21st Floor, Philadelphia,</p> <p>12 Pennsylvania, in the matter of Commonwealth of</p> <p>13 Pennsylvania versus Think Finance,</p> <p>14 Incorporated, et al.</p> <p>15 The deponent is Steven Haynes.</p> <p>16 All counsel will be noted on the stenographic</p> <p>17 record. The court reporter is Jeannine</p> <p>18 Cancelliere. She'll now swear in the witness.</p> <p>19 - - -</p> <p>20 STEVEN HAYNES, after having been</p> <p>21 first duly sworn, was examined and testified</p> <p>22 as follows:</p> <p>23 VIDEOTAPE OPERATOR: Please</p> <p>24 proceed, counsel.</p> | <p style="text-align: right;">Page 8</p> <p>1 A. I have.</p> <p>2 Q. How many times?</p> <p>3 A. Once for sure, maybe twice.</p> <p>4 Q. The one for sure, what case was that?</p> <p>5 A. It was a divorce case of a business</p> <p>6 partner of mine.</p> <p>7 Q. I don't care about that divorce case.</p> <p>8 What about the other case?</p> <p>9 A. It was an accident case.</p> <p>10 Q. Okay. So nothing pertaining to your</p> <p>11 business activities?</p> <p>12 A. No.</p> <p>13 Q. I assume your lawyer has explained to</p> <p>14 you the procedures and -- but I need to go</p> <p>15 over them just to make sure that we're on the</p> <p>16 same page.</p> <p>17 So what's going to happen is</p> <p>18 as we proceed today, I am going to be asking</p> <p>19 you questions. You're going to be answering</p> <p>20 those questions to the best of your ability.</p> <p>21 There may be some comment from the lawyers in</p> <p>22 the room. Everything that is spoken is going</p> <p>23 to be taken down by the court reporter, who's</p> <p>24 sitting at your left.</p> |

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| <p style="text-align: right;">Page 25</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. Which came first, Think or Zest?</p> <p>4 A. Think Finance.</p> <p>5 Q. So both of those lending operations were</p> <p>6 financed by Victory Park, right?</p> <p>7 MR. SCHEFF: Object to form.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Well, you know that Think was, right?</p> <p>11 MR. SCHEFF: Same objection.</p> <p>12 THE WITNESS: Yes, sir.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Okay. But you don't know if Zest was?</p> <p>15 A. No.</p> <p>16 Q. Okay. Now, turn the page, and we're</p> <p>17 now -- the number at the right-hand side would</p> <p>18 be 914.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And this appears to be -- so this</p> <p>21 is Terence Dunleavy's original e-mail, and it</p> <p>22 appears to be him forwarding an e-mail from</p> <p>23 you; am I right?</p> <p>24 MR. SCHEFF: Object to the</p> | <p style="text-align: right;">Page 27</p> <p>1 two years earlier, you had expanded your</p> <p>2 dealings with Native American tribes from</p> <p>3 gaming and energy to installment and payday</p> <p>4 lenders. That is true, right?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. And then the next sentence says:</p> <p>7 I was responsible for setting up Think Finance</p> <p>8 with the Rocky Boy reservation and was a party</p> <p>9 to their agreements with Victory Park. That's</p> <p>10 all true, right?</p> <p>11 A. That's correct.</p> <p>12 Q. And the "I" there is Steven Haynes,</p> <p>13 isn't it?</p> <p>14 MR. SCHEFF: Object to the</p> <p>15 form. You can answer the question.</p> <p>16 THE WITNESS: I don't</p> <p>17 remember. I can see where you can get that</p> <p>18 conclusion. I just don't remember.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. You don't remember writing this. And I</p> <p>21 appreciate that. I understand that, but over</p> <p>22 the course of reading this, you may -- it --</p> <p>23 your recollection might get refreshed so this</p> <p>24 sounds like something you probably wrote to</p> |
| <p style="text-align: right;">Page 26</p> <p>1 form.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. ACKELSBURG:</p> <p>4 Q. Well, let's look at this. "Terry, two</p> <p>5 years ago, I expanded by my dealings with</p> <p>6 Native American tribes from gaming and energy</p> <p>7 to installment and payday lenders." Do you</p> <p>8 see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. That's you speaking, right? Or writing.</p> <p>11 MR. SCHEFF: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: I don't know.</p> <p>14 I've not seen this before.</p> <p>15 BY MR. ACKELSBURG:</p> <p>16 Q. I'm not asking whether you've seen this</p> <p>17 before. I'm asking you, are those your words</p> <p>18 to Terry?</p> <p>19 MR. SCHEFF: Object to form;</p> <p>20 asked and answered. You can answer it again.</p> <p>21 THE WITNESS: I don't know.</p> <p>22 BY MR. ACKELSBURG:</p> <p>23 Q. Okay. Well, this is in 2013, July of</p> <p>24 2013. It's correct, isn't it, that in 2011,</p> | <p style="text-align: right;">Page 28</p> <p>1 Terry Dunleavy.</p> <p>2 MR. SCHEFF: Object to the</p> <p>3 form; it misstates testimony. You can answer</p> <p>4 the question.</p> <p>5 BY MR. ACKELSBURG:</p> <p>6 Q. Have we gotten to the point yet where</p> <p>7 your recollection is refreshed?</p> <p>8 A. I don't remember writing this. Clearly</p> <p>9 the first paragraph is something that I have</p> <p>10 done, yes.</p> <p>11 Q. Let's continue reading. "Since that</p> <p>12 initial deal, I've set up 12 other lenders</p> <p>13 with tribes." That's true, right? Was that</p> <p>14 true at the time, in July of 2013?</p> <p>15 A. Very close, yes.</p> <p>16 Q. It might have been an exaggeration a</p> <p>17 little bit, but --</p> <p>18 A. Or it didn't take after they were put</p> <p>19 together. But yes, I had made introductions</p> <p>20 of lenders to tribes.</p> <p>21 Q. One of those was ZestCash?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Did that one get off the ground?</p> <p>24 A. I believe it did.</p> |

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| <p style="text-align: right;">Page 29</p> <p>1 Q. Okay. And what tribe was that?</p> <p>2 A. That was the Turtle Mountain Band of</p> <p>3 Chippewa Indians.</p> <p>4 Q. And where are they located?</p> <p>5 A. In North Dakota.</p> <p>6 Q. Was that a payday product -- payday loan</p> <p>7 product?</p> <p>8 A. I don't know what kind of product they</p> <p>9 offered.</p> <p>10 Q. But it was an online lending product of</p> <p>11 some sort?</p> <p>12 A. It was an online lending product, yes.</p> <p>13 Q. What was the -- do you know what the</p> <p>14 website was called? What would someone need</p> <p>15 to type in to get to that website?</p> <p>16 A. I don't know. I made an introduction</p> <p>17 and once they were put together, I was</p> <p>18 dismissed. So I don't know what the terms of</p> <p>19 what they were doing was.</p> <p>20 Q. What were the terms of your compensation</p> <p>21 for putting that together?</p> <p>22 A. I got paid \$100,00 for making the</p> <p>23 introduction.</p> <p>24 Q. And nothing further?</p> | <p style="text-align: right;">Page 31</p> <p>1 you know, you know. If you don't, you don't.</p> <p>2 BY MR. ACKELSBURG:</p> <p>3 Q. You know it was sometime after 2011,</p> <p>4 right? And it was sometime before July '13</p> <p>5 when Mr. Dunleavy --</p> <p>6 A. Yes.</p> <p>7 Q. So somewhere in that range?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you know if that -- do you know</p> <p>10 during what period of time that loan product</p> <p>11 was online?</p> <p>12 A. I believe it is still online.</p> <p>13 Q. How did you know that -- or did you know</p> <p>14 that Victory Park was involved in the ZestCash</p> <p>15 deal like it was in the Think Finance deal?</p> <p>16 MR. SHELTON: Objection to</p> <p>17 form.</p> <p>18 THE WITNESS: I did not.</p> <p>19 BY MR. ACKELSBURG:</p> <p>20 Q. Okay. You say other tribes -- I'm</p> <p>21 sorry. You say with other lenders including</p> <p>22 ZestCash, and then you say CompuCredit. Is</p> <p>23 that a deal that came to fruition?</p> <p>24 MR. SCHEFF: Object to the</p> |
| <p style="text-align: right;">Page 30</p> <p>1 A. Nothing further.</p> <p>2 Q. Who paid that? Was that the tribe? Was</p> <p>3 that Victory Park? I mean --</p> <p>4 A. It was -- it's always -- in my business,</p> <p>5 it is always the commercial corporation that I</p> <p>6 bring to the tribe that pays the fees. It</p> <p>7 would have been ZestCash.</p> <p>8 Q. And ZestCash is the name -- that's sort</p> <p>9 of the equivalent of ThinkCash, if we look at</p> <p>10 the Rocky Boy deal?</p> <p>11 MR. SCHEFF: Objection.</p> <p>12 MR. SHAPIRO: Object to the</p> <p>13 form.</p> <p>14 MR. SCHEFF: You can answer</p> <p>15 the question.</p> <p>16 THE WITNESS: I don't know</p> <p>17 what their product was. ZestCash was the</p> <p>18 corporation that was looking for a tribe to do</p> <p>19 online lending with.</p> <p>20 BY MR. ACKELSBURG:</p> <p>21 Q. Okay. And what year was that?</p> <p>22 A. I would have to guess. I don't know for</p> <p>23 sure.</p> <p>24 MR. SCHEFF: Don't guess. If</p> | <p style="text-align: right;">Page 32</p> <p>1 form for the characterization of the question.</p> <p>2 Mr. Haynes has said he doesn't remember</p> <p>3 writing this, and you're characterizing your</p> <p>4 question as if he did. You can answer the</p> <p>5 question.</p> <p>6 THE WITNESS: I don't</p> <p>7 remember the CompuCredit. I just --</p> <p>8 unfortunately, I don't.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. Okay. What about Microbilt?</p> <p>11 A. Yes, I remember Microbilt.</p> <p>12 Q. Did you do a deal with Microbilt?</p> <p>13 A. Microbilt was a service provider and</p> <p>14 they were in a couple of the deals that we</p> <p>15 did.</p> <p>16 Q. With different tribes?</p> <p>17 A. Yes, sir.</p> <p>18 Q. What were those tribes?</p> <p>19 A. The Rosebud Sioux Tribe did a deal with</p> <p>20 Microbilt. I believe that the Ketowah tribe</p> <p>21 may have been --</p> <p>22 Q. Spell Ketowah?</p> <p>23 A. K-E-T-O-W-A-H.</p> <p>24 Q. Where's the Ketowah tribe located?</p> |

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| <p style="text-align: right;">Page 53</p> <p>1 Q. When's the last time -- is Mr. Dunleavy 2 still representing you? 3 A. He does. 4 Q. Was the initial deal that you did 5 involving Think and the Rocky Boy Chippewa 6 Cree the biggest tribal lending deal you've 7 been involved in? 8 MR. SCHEFF: Object to the 9 form. You can answer the question. 10 THE WITNESS: Yes. 11 BY MR. ACKELSBURG: 12 Q. Is it the biggest in terms of the volume 13 of loans generated by the business? 14 A. I don't know how many loans they've 15 generated. 16 Q. Well, in terms of -- but it's the 17 biggest in terms of the most cash generated 18 for you though, correct? 19 A. That's correct. 20 Q. Why was that deal so lucrative? What 21 were the aspects of that deal that made it 22 especially lucrative for you? 23 A. Think Finance had decided that instead 24 of paying me a flat fee for making the</p> | <p style="text-align: right;">Page 55</p> <p>1 with the tribe before you had a relationship 2 with Think Finance, correct? 3 A. That's correct. 4 Q. That's why Think Finance was interested 5 in developing a relationship with you, 6 correct? 7 MR. SCHEFF: Object to the 8 form. You can answer the question. 9 MR. SHELTON: Objection -- 10 BY MR. ACKELSBURG: 11 Q. As best as you understand. 12 MR. SHELTON: Object to form. 13 MR. ACKELSBURG: I'll 14 withdraw. I'll restate the question. 15 BY MR. ACKELSBURG: 16 Q. You spent time on the Rocky Boy 17 reservation in Box Elder, Montana? 18 A. Yes, I have. 19 Q. Okay. How many times have you been 20 there? 21 A. Half a dozen. 22 Q. When was the first time? 23 A. I'm not sure. 24 Q. Approximately?</p> |
| <p style="text-align: right;">Page 54</p> <p>1 connection, they were going to pay me a 2 percent of collected revenues. 3 Q. Good deal, huh? 4 MR. SCHEFF: Object to the 5 form. You can answer the question. 6 THE WITNESS: It was a very 7 good deal for me. 8 BY MR. ACKELSBURG: 9 Q. Why would they want to give you -- do 10 you have any sense of why they'd want to give 11 you 1 percent of their revenues? 12 MR. SHELTON: Object to the 13 form. 14 THE WITNESS: I believe at 15 the time in our discussions, it was not that 16 they wanted to give me 1 percent of the 17 revenues. They just did not want to give me a 18 large flat fee for finding them a tribe. 19 BY MR. ACKELSBURG: 20 Q. Let's move to the beginning of this 21 relationship with Think Finance and the Rocky 22 Boy Chippewa Cree. 23 How did you get connected 24 to -- did you have a -- you had a relationship</p> | <p style="text-align: right;">Page 56</p> <p>1 A. Approximately 2006. 2 Q. Okay. And when's the most recent time? 3 A. Probably around 2011. 4 Q. When the deal was first set up with 5 Think Finance? 6 MR. SCHEFF: Object to the 7 form. You can answer the question. 8 THE WITNESS: Correct. 9 BY MR. ACKELSBURG: 10 Q. How would you describe -- describe the 11 reservation in Box Elder for me? 12 A. It is poor. It is disheveled. It's 13 beautiful. 14 Q. Would it be correct to say it is also 15 very remote? 16 A. It is extremely remote. 17 Q. Would I be correct to say that the 18 biggest population center is probably Great 19 Falls, which is roughly two hours away? 20 A. Yeah, that's pretty safe to say. 21 Q. Okay. On the Canadian -- it's near the 22 Canadian border, correct? 23 A. Correct. 24 Q. But there's no population centers -- big</p> |

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| <p style="text-align: right;">Page 57</p> <p>1 population centers in Canada near Box Elder</p> <p>2 either; am I right?</p> <p>3 A. I don't remember. I think you're</p> <p>4 correct.</p> <p>5 Q. What economic activity, if any, exists</p> <p>6 at Box Elder?</p> <p>7 MR. SCHEFF: Object to the</p> <p>8 form. You can answer the question if you can.</p> <p>9 BY MR. ACKELSBURG:</p> <p>10 Q. That you recall.</p> <p>11 A. They had an oil and gas industry on the</p> <p>12 reservation. They had a casino.</p> <p>13 Q. That's about it?</p> <p>14 A. That's about it.</p> <p>15 Q. Those half a dozen times that you were</p> <p>16 in Box Elder, how did you get there?</p> <p>17 A. I would fly to Great Falls or someplace</p> <p>18 close and rent a car and drive for a very long</p> <p>19 time.</p> <p>20 Q. Now, the company that financed the</p> <p>21 casino that you mentioned, that's a company</p> <p>22 called BEH Gaming, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. Now, do you have any connection</p> | <p style="text-align: right;">Page 59</p> <p>1 to take your deposition.</p> <p>2 MR. SCHEFF: Let's go off.</p> <p>3 VIDEOTAPE OPERATOR: 9:36,</p> <p>4 off the record.</p> <p>5 - - -</p> <p>6 (Whereupon a short break was taken at this</p> <p>7 time.)</p> <p>8 - - -</p> <p>9 VIDEOTAPE OPERATOR: 9:42,</p> <p>10 we're back on the record.</p> <p>11 BY MR. ACKELSBURG:</p> <p>12 Q. So the casino that's on the Rocky Boy</p> <p>13 reservation, it's called the Northern Winds</p> <p>14 Casino?</p> <p>15 A. I believe that's correct.</p> <p>16 Q. So your role with regard to the casino</p> <p>17 was supplying the slot machines?</p> <p>18 MR. SCHEFF: Object to the</p> <p>19 form. You can answer if you can.</p> <p>20 THE WITNESS: I supplied them</p> <p>21 slot machines later in the life of the casino.</p> <p>22 I was not involved in the building or the</p> <p>23 opening of the casino.</p> <p>24 BY MR. ACKELSBURG:</p> |
| <p style="text-align: right;">Page 58</p> <p>1 to that company or to the principals of that</p> <p>2 company?</p> <p>3 MR. SCHEFF: Object to the</p> <p>4 form. You can answer the question.</p> <p>5 THE WITNESS: I have no</p> <p>6 connection to the company. I know the</p> <p>7 principals.</p> <p>8 BY MR. ACKELSBURG:</p> <p>9 Q. Okay. And who are they, the principals?</p> <p>10 MR. SCHEFF: Irv, if this has</p> <p>11 something to do with the eventual relationship</p> <p>12 with Think Finance, then I don't have a</p> <p>13 problem with this question. But if it</p> <p>14 doesn't, then we're just not going to his</p> <p>15 other business relationships. It's just none</p> <p>16 of your business.</p> <p>17 BY MR. ACKELSBURG:</p> <p>18 Q. You can answer the question.</p> <p>19 MR. SCHEFF: You can't answer</p> <p>20 the question. Does it have a relationship?</p> <p>21 MR. ACKELSBURG: Yes.</p> <p>22 MR. SCHEFF: Okay. What's</p> <p>23 the relationship?</p> <p>24 MR. ACKELSBURG: I'm not here</p> | <p style="text-align: right;">Page 60</p> <p>1 Q. Okay. So the developer of the casino</p> <p>2 was BEH, right?</p> <p>3 A. I believe that to be correct, yes.</p> <p>4 Q. Okay. And at some point after it was</p> <p>5 opened, you developed a contract -- you had an</p> <p>6 agreement with the tribe to lease slot</p> <p>7 machines, like you were talking about before?</p> <p>8 MR. SCHEFF: Object to the</p> <p>9 form. You can answer the question.</p> <p>10 THE WITNESS: I was --</p> <p>11 entered into a revenue agreement to lease</p> <p>12 machines to the tribe, to the casino, correct.</p> <p>13 BY MR. ACKELSBURG:</p> <p>14 Q. Okay. And through what business name</p> <p>15 was your slot machine contract with the</p> <p>16 Chippewa Cree?</p> <p>17 A. I believe it was AGame NV. It may have</p> <p>18 been Tribal Gaming Solutions. I'm not sure</p> <p>19 which one. It may have been both.</p> <p>20 Q. AGame NV was a business -- who is your</p> <p>21 partner in that business?</p> <p>22 A. Ray Brown.</p> <p>23 Q. And is Ray Brown connected to BEH</p> <p>24 Gaming?</p> |

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| <p style="text-align: right;">Page 61</p> <p>1 MR. SCHEFF: Object to the 2 form. 3 THE WITNESS: I'm not sure. 4 BY MR. ACKELSBURG: 5 Q. How did you meet Ray Brown? 6 A. I met Ray Brown in Dallas years before. 7 He and a partner he had then came to my office 8 looking for capital at the time for Indian 9 gaming machine leasing. 10 Q. Was Mr. Brown the one who connected you 11 to the Chippewa Cree that led to the slot 12 machine deal at the Northern Winds Casino? 13 MR. SCHEFF: Object to the 14 form. You can answer the question. 15 THE WITNESS: Yes, Mr. Brown 16 introduced me to the Chippewa Cree. 17 BY MR. ACKELSBURG: 18 Q. As a result of that, you and Mr. Brown 19 created this LLC called AGame NV? 20 MR. SCHEFF: Object to the 21 form. You can answer the question. 22 THE WITNESS: I don't 23 remember it being specifically for or starting 24 with Chippewa Cree.</p> | <p style="text-align: right;">Page 63</p> <p>1 getting a piece of the action at the Northern 2 Winds Casino? 3 MR. SCHEFF: Object to the 4 form. You can answer the question if you can. 5 THE WITNESS: Mr. Brown, you 6 know, yes, brought it to our attention -- my 7 attention, the opportunity to lease slot 8 machines to the Northern Winds Casino. 9 BY MR. ACKELSBURG: 10 Q. And then how does this work? Do you and 11 Mr. Brown raise money to do this? Do you have 12 investors? Did you have investors in 13 AGame NV? 14 MR. SCHEFF: Why is this -- 15 how is this relevant to this case, Mr. 16 Ackelsberg? I mean, honestly, how is this 17 relevant? 18 MR. ACKELSBURG: We'll get 19 back to AGame NV later. That's why. 20 MR. SCHEFF: Okay. 21 BY MR. ACKELSBURG: 22 Q. Now, the deal that you signed with the 23 Chippewa Cree for the slot machines, was there 24 any paperwork connected to that deal?</p> |
| <p style="text-align: right;">Page 62</p> <p>1 BY MR. ACKELSBURG: 2 Q. But when you first met Mr. Brown, I 3 mean, you weren't talking specifically about 4 the Chippewa Cree, you were talking more 5 generally about providing machines to tribal 6 casinos, correct? 7 MR. SCHEFF: Object to the 8 form. 9 THE WITNESS: When Mr. Brown 10 came to our offices, he was looking for 11 financing for a whole host of gaming-related 12 opportunities in and off reservations. 13 BY MR. ACKELSBURG: 14 Q. And then at some time you and Mr. Brown 15 decided to create a business together? 16 A. That's correct. 17 Q. Okay. And what was the purpose of that 18 business? 19 A. The purpose of AGame was to develop 20 and -- develop tribal casinos, commercial 21 casinos, and to lease slot machines to those 22 casinos. 23 Q. And at some point, Mr. Brown brought to 24 your attention the possibility of AGame NV</p> | <p style="text-align: right;">Page 64</p> <p>1 MR. SCHEFF: Object to the 2 form. You can answer the question. 3 THE WITNESS: There were 4 always signed contracts with our agreements. 5 BY MR. ACKELSBURG: 6 Q. Did you provide those signed contracts 7 either to your lawyers at Dinsmore or to your 8 lawyers here at Montgomery McCracken? 9 A. I provided access to all of my files, 10 both on my computer and online and my file 11 cabinets. 12 Q. And that would include the contract for 13 the slot machines with the Chippewa Cree? 14 A. If they still exist, yes. 15 Q. Now, at the time that -- now, is the 16 first time that you went to the Rocky Boy 17 reservation to investigate the possibility of 18 the deal for the slot machine? 19 MR. SCHEFF: Object to the 20 form. 21 THE WITNESS: No, sir. 22 BY MR. ACKELSBURG: 23 Q. What was the occasion for your first 24 trip to the Rocky Boy reservation?</p> |

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| <p style="text-align: right;">Page 65</p> <p>1 A. I believe my first trip, the casino was 2 under construction and they were looking for 3 help with their oil and gas leases. 4 Q. And who was looking for help, the tribe? 5 A. The tribal oil and gas corporation that 6 they owned. 7 Q. I see. And Mr. Brown made that 8 connection for you with the tribe? 9 A. Yes, sir. 10 Q. So this was after the meeting in Dallas 11 with Mr. Brown? He connected you to the tribe 12 with regard to an oil and gas lease? 13 A. Yes, sir. 14 Q. Okay. And did you have a contract with 15 the Chippewa Cree on an oil and gas deal? 16 A. No, sir. After investigating the 17 opportunity, there was no business to be done. 18 Q. Okay. And would the next time you went 19 up there, that would -- the next time you went 20 up there would have been with regard to the 21 slot machines? 22 A. I'm not sure. There was another 23 opportunity to build hotels and multifamily 24 housing up there. And then after that -- or</p> | <p style="text-align: right;">Page 67</p> <p>1 correct? 2 A. That's correct. 3 Q. Now, with the slot machines, for 4 example, who at the tribe were you dealing 5 with? 6 A. I don't remember specifically. 7 Traditionally, we deal with the general 8 manager of the casino. 9 Q. You weren't dealing with anyone in the 10 tribal council, that you remember? 11 A. I had met members of the tribal council. 12 But the way the businesses always work is you 13 go to the general manager because they had the 14 knowledge of what they need on the 15 reservation. 16 Q. And you don't remember who that general 17 manager was? 18 A. I don't remember his name, no. 19 Q. Okay. So how did the first connection 20 with Think Finance happen? 21 MR. SCHEFF: Object to the 22 form. You can answer the question. 23 THE WITNESS: My attorney, 24 Tim Anderson.</p> |
| <p style="text-align: right;">Page 66</p> <p>1 previous with the slot machines, there was 2 business opportunities growing out of 3 Mr. Brown's relationship with the tribe. 4 Q. But none of them came to fruition? 5 A. No, sir. 6 Q. Now, with regard to the casino, given 7 how remote that reservation is, what was the 8 business plan for getting people to come to 9 the casino? 10 MR. SCHEFF: Object to the 11 form. You can answer the question if you can. 12 Again, I don't know how this is on point, 13 Mr. Ackelsberg, to this case. You can answer 14 the question if you can. 15 THE WITNESS: That's a very 16 good question. I wasn't invested in the 17 casino. I don't know what their business plan 18 was. 19 BY MR. ACKELSBURG: 20 Q. Now, was Mr. Brown also the one who 21 connected you? Did Mr. -- well, you already 22 had a relationship -- before the Think Finance 23 deal happened, you already had this 24 pre-existing relationship with the tribe,</p> | <p style="text-align: right;">Page 68</p> <p>1 BY MR. ACKELSBURG: 2 Q. At Pepper? 3 A. At Pepper Hamilton. Introduced me to 4 Rick Eckman, who is also an attorney there who 5 was working with Think Finance to help them 6 find a tribe to partner with. 7 Q. So tell us what happened. 8 A. I met with Tim, talked to Rick Eckman on 9 the phone. He set up a conference call 10 with -- or a call between myself and Jason 11 Harvison, and Jason came over after that phone 12 call and showed me a presentation of what it 13 is they were trying to accomplish. And I 14 thought it was interesting; I thought I could 15 help them. 16 Q. The meeting with Tim Anderson, was that 17 at Pepper's office in Philly. 18 A. No, it was not. 19 Q. Where was it? 20 A. It was either -- I'm not sure where it 21 was. I don't know. 22 Q. Okay. And so you met with Mr. Anderson. 23 He got Eckman on the phone, and this was 24 basically Eckman presenting a potential</p> |

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| <p style="text-align: right;">Page 93</p> <p>1 statements, all support documents." 2 So he's referring to the 3 Great Plains Lending website that they had 4 ready to go, right? 5 MR. SCHEFF: Object to the 6 form. Calls for speculation. You can answer 7 the question if you can. 8 BY MR. ACKELSBURG: 9 Q. That you saw referenced in the 10 PowerPoint? 11 A. I don't -- 12 MR. SCHEFF: Same objection. 13 You can answer the question. 14 THE WITNESS: I don't know 15 what he was referring to in this. 16 BY MR. ACKELSBURG: 17 Q. And then he says: I got pretty excited 18 yesterday around noon when you said that the 19 Montana tribe had everything ready to go and 20 then lost their funding. 21 Now, when you say that the 22 Montana -- well, first of all, the Montana 23 tribe, you're referring to Rocky Boy here, 24 right?</p> | <p style="text-align: right;">Page 95</p> <p>1 Q. Okay, okay. When it says here that the 2 tribe had everything ready to go and then lost 3 their funding, that was with regard to the 4 pre-existing online lending product that they 5 were trying to launch; am I right? 6 MR. SCHEFF: Object to the 7 form. You can answer the question if you can. 8 THE WITNESS: It was that 9 they had an online lending business in place, 10 correct. 11 BY MR. ACKELSBURG: 12 Q. But they didn't have the funding to 13 launch it? 14 MR. SCHEFF: Object to the 15 form. You can answer the question if you can. 16 THE WITNESS: I don't 17 remember whether it was to launch it or to 18 grow it. 19 BY MR. ACKELSBURG: 20 Q. Okay. Let's go to your reply. And then 21 you reply the same day, actually it looks like 22 15 minutes later. Do you see that? 23 A. At the bottom of the first page? 24 Q. Yes.</p> |
| <p style="text-align: right;">Page 94</p> <p>1 A. Rocky Boy was the only Montana tribe 2 that I had -- yes. 3 Q. Yeah. Okay. So it would have been that 4 at the time that you were talking with 5 Mr. Shaper and Mr. Harvison prior to the NDA 6 being signed, that you and Mr. Brown had 7 already concluded your analysis where you 8 figured that Rocky Boy might be the one, 9 right? 10 MR. SCHEFF: Object to the 11 form. You can answer the question. 12 THE WITNESS: At this point, 13 we had found a tribe that hit all of our 14 criteria -- 15 BY MR. ACKELSBURG: 16 Q. Right. 17 A. -- and Ray was chatting and talking to 18 them, yes. 19 Q. Oh, so Ray was already talking about the 20 possibility of the deal before the NDA was 21 signed? 22 A. Ray was the contact for the tribe. I 23 was the contact with Think Finance as he knew 24 the tribe well.</p> | <p style="text-align: right;">Page 96</p> <p>1 A. Yes. 2 Q. Actually, you're all in Dallas at this 3 point, right? I mean -- or Dallas/Fort Worth. 4 Think Finance is in Fort Worth; and you're in 5 Dallas, right? 6 A. That's correct. 7 Q. Okay. So you reply to Steve and -- with 8 the following: "Steve, thanks for the e-mail. 9 We're moving quickly. I would greatly 10 appreciate a letter outlining my 11 compensation." 12 Because at that point, it 13 wasn't clear how you were going to get paid, 14 correct? 15 A. That's correct. 16 Q. Okay. So you wanted to know before you 17 get going with this, what's -- what are the 18 dollars for AGame NV, right? 19 A. At this point, I had no idea how 20 valuable or invaluable or not valuable an 21 installment lending business was. So yes, I 22 wanted to know how I was going to get paid for 23 doing this work. 24 Q. Okay. And then it says: I've extended</p> |

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| <p style="text-align: right;">Page 97</p> <p>1 the offer, meaning that Ray has talked --</p> <p>2 that's -- when you say: I have extended the</p> <p>3 offer, you're referring to Ray talking to the</p> <p>4 tribe, right?</p> <p>5 A. I'm not sure what I -- who I was</p> <p>6 referring to when I say "I've extended an</p> <p>7 offer."</p> <p>8 Q. And it says that they are to meet</p> <p>9 this -- meet, they're checking and working on</p> <p>10 due diligence. They have to pool info and</p> <p>11 call a meeting of their council and the</p> <p>12 council members. I mean, you're talking about</p> <p>13 the tribe here, right?</p> <p>14 A. I don't remember if I was talking about</p> <p>15 Ray talking to a tribal member, the business</p> <p>16 office or their attorney, Robin Kovash. But</p> <p>17 it was some representative of the tribe.</p> <p>18 Q. Okay. So then you get a reply from</p> <p>19 Steve Shaper. So your e-mail was at 2 p.m.</p> <p>20 and then at quarter to four, Steve Shaper</p> <p>21 replies to you, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And I want to make sure I have this</p> <p>24 correct, what it says. "Steve, if you, your</p> | <p style="text-align: right;">Page 99</p> <p>1 Mr. Shaper's e-mail -- "Implicit is the fact</p> <p>2 that Steven Haynes or another of his entities</p> <p>3 will finance all loans made by the tribal</p> <p>4 corporation for two days before they are sold</p> <p>5 to Think Finance's outside loan financing</p> <p>6 organization." Do you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Okay. Now, was this the first time that</p> <p>9 you heard anything about you being asked to</p> <p>10 finance the loans being made by the tribe?</p> <p>11 A. I don't remember if that is the first</p> <p>12 time that this e-mail or it was in a prior</p> <p>13 conversation.</p> <p>14 Q. Well, when Jason Harvison first came to</p> <p>15 you and you met at your residence, wasn't --</p> <p>16 were any of these terms discussed?</p> <p>17 MR. SCHEFF: "These terms"</p> <p>18 meaning the compensation terms?</p> <p>19 MR. ACKELSBURG: Yes, the</p> <p>20 compensation terms.</p> <p>21 MR. SCHEFF: Thank you. You</p> <p>22 can answer that question.</p> <p>23 THE WITNESS: Yes --</p> <p>24 BY MR. ACKELSBURG:</p> |
| <p style="text-align: right;">Page 98</p> <p>1 Montana partner, or any other and Think</p> <p>2 Finance are able to move fast enough to put</p> <p>3 together an agreement whereby one of your</p> <p>4 tribes is Think Finance's first tribal</p> <p>5 partner, Think Finance will pay the tribal</p> <p>6 corporation 4 1/2 percent of gross interest</p> <p>7 collected from all loans made by that tribal</p> <p>8 corporation through Think Finance." Right?</p> <p>9 A. That's what it says, correct.</p> <p>10 Q. Okay. And you or any entity you name,</p> <p>11 1 percent of the gross interest collected. So</p> <p>12 that was the offer, right?</p> <p>13 A. That was the offer.</p> <p>14 Q. So it was a total of 5 1/2 percent of</p> <p>15 the revenue, 4 1/2 going to the tribe and 1</p> <p>16 going to you or any entity that you name,</p> <p>17 correct?</p> <p>18 MR. SCHEFF: Object to form.</p> <p>19 THE WITNESS: Yes, that's</p> <p>20 what this says.</p> <p>21 BY MR. ACKELSBURG:</p> <p>22 Q. Well, that was the offer, right?</p> <p>23 A. That was the offer.</p> <p>24 Q. "Implicit" -- I'm continuing to read in</p> | <p style="text-align: right;">Page 100</p> <p>1 Q. In other words --</p> <p>2 A. -- yes. We discussed fair compensation</p> <p>3 for the roles played and -- yes.</p> <p>4 Q. Were the numbers as high as they are in</p> <p>5 the e-mail when you were talking with Jason?</p> <p>6 A. I remember having a discussion with</p> <p>7 Jason about how to lay out a plan that was</p> <p>8 acceptable to a tribe because they had been</p> <p>9 burned very many times in the past on</p> <p>10 transactions. And it was best that they were</p> <p>11 compensated off the top with no expenses taken</p> <p>12 out, so they could calculate their income</p> <p>13 every day and not worry about salaries paid to</p> <p>14 other people or expenses or travel costs or</p> <p>15 anything else.</p> <p>16 So when this -- this fits the</p> <p>17 general description of the tribe needs to have</p> <p>18 a gross compensation plan. And I just don't</p> <p>19 remember if in my discussion with Jason we</p> <p>20 talked about me raising money for them or if</p> <p>21 it first was brought up in this letter.</p> <p>22 Q. Okay. And then Shaper says: This</p> <p>23 applies only to Think Finance's first tribal</p> <p>24 partner and signed agreements must be in place</p> |

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| <p style="text-align: right;">Page 301</p> <p>1 Q. Okay. Are you still involved with Plain 2 Green at all? 3 A. I'm not involved with Plain Green in any 4 way. 5 Q. Do you have any further relationships 6 with Think or Cortex? Have you ever heard of 7 a company called Cortex? 8 MR. SCHEFF: Object to the 9 form. 10 THE WITNESS: I have heard of 11 Cortex. 12 BY MR. ACKELSBURG: 13 Q. Have you had any business with Cortex? 14 A. I don't do any business with Cortex, no. 15 Q. Or with Think? 16 A. I don't think I do any business directly 17 with Think, no. 18 MR. SCHEFF: We're at 3:30. 19 MR. ACKELSBURG: Thank you. 20 MR. SCHEFF: Steven, can I 21 just talk to you for a second outside. 22 VIDEOTAPE OPERATOR: 3:31, 23 off the record. 24 3:32, we are back on the</p> | <p style="text-align: right;">Page 303</p> <p>1 advocacy for the tribe in those negotiations? 2 A. Vigorous. 3 Q. Did Mr. Kovash push for contractual 4 terms more favorable to the tribe, than those 5 originally on the table? 6 A. I believe he did. I know that 7 everything was red lined and marked up 8 significantly. 9 Q. Was it your recollection that Mr. Kovash 10 was successful in negotiating a more favorable 11 agreement for the tribe, than the terms 12 initially under consideration? 13 A. I believe he did. 14 Q. Did you introduce Mr. Kovash to the 15 tribe? 16 A. No, sir. 17 Q. Is it your understanding that Mr. Kovash 18 was already representing the Chippewa Cree 19 Tribe, before the tribe had any dealings with 20 Think Finance? 21 A. Yes, he was. 22 Q. In your line of work, you've helped 23 broker various contractual arrangements 24 between Native American tribes and non-tribe</p> |
| <p style="text-align: right;">Page 302</p> <p>1 record. 2 - - - 3 EXAMINATION 4 - - - 5 BY MR. SHELTON: 6 Q. Mr. Haynes, my name is Matt Sheldon. 7 I'm counsel for the Think Finance defendants. 8 And I will try to keep this brief because I 9 know you got to be somewhere. 10 I would like to revisit Mr. 11 Ackelsberg's series of questions regarding the 12 negotiations in 2011 between the Chippewa Cree 13 Tribe, yourself and Think Finance regarding 14 the establishment of the tribal lending 15 program. Do you understand what time period 16 I'm talking about? 17 A. Yes, sir. 18 Q. Do you remember an attorney named Robin 19 Kovash with the firm Jones and Keller? 20 A. Yes, sir. 21 Q. Did that attorney represent the Chippewa 22 Cree tribe in the negotiations? 23 A. Yes, he did. 24 Q. How would you characterize Mr. Kovash's</p> | <p style="text-align: right;">Page 304</p> <p>1 counter parties, right? 2 A. Yes, sir. 3 Q. Is it accurate that you brokered dozens 4 of such contractual arrangements? 5 MR. ACKELSBURG: At this 6 point I object to the form of the question. 7 MR. SHELTON: Let me finish 8 my questions, then you can -- you're objecting 9 to form. You said, object to form. We've got 10 a tight timeframe, let's go. 11 MR. ACKELSBURG: What I'm 12 asking is, can I avoid doing that for every 13 question where you're leading? Can we just 14 accept that I've objected -- 15 MR. SHELTON: Continued 16 objection granted. 17 MR. ACKELSBURG: Thank you. 18 BY MR. SHELTON: 19 Q. Is it accurate that in establishing 20 those contractual arrangements, the tribes 21 generally had to employ attorneys to negotiate 22 the terms acceptable to the tribe? 23 A. In every case. 24 Q. These attorneys charge for their time,</p> |

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| <p style="text-align: right;">Page 305</p> <p>1 correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. In your experience, brokering those</p> <p>4 dozens of contractual arrangements, what was</p> <p>5 the standard industry practice for the payment</p> <p>6 of the tribe's attorney's fees?</p> <p>7 A. In almost all instances, the commercial</p> <p>8 enterprise trying to do business with the</p> <p>9 tribe would pay the tribe's legal expenses.</p> <p>10 Q. Does this include arrangements involving</p> <p>11 the gaming industry?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Oil and gas?</p> <p>14 A. Yes.</p> <p>15 Q. Real estate development?</p> <p>16 A. Yes.</p> <p>17 Q. Financial services arrangements?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know why that was the case?</p> <p>20 A. Early on, the tribes -- from '99 forward</p> <p>21 the tribes had either little or no money. And</p> <p>22 the lawyers representing them wouldn't do it</p> <p>23 pro bono, so they expected the commercial</p> <p>24 company to pay. Over time, as the casinos</p> | <p style="text-align: right;">Page 307</p> <p>1 percent of 4.5 percent, you can multiply that</p> <p>2 by five. If the business is not particularly</p> <p>3 successful, up to 7 if it's really successful.</p> <p>4 And that would correlate to a</p> <p>5 gross profit or an after expense, an EBITDA</p> <p>6 number. So 4.5 percent would look roughly</p> <p>7 somewhere between 25 and 35 percent of the</p> <p>8 gross profits.</p> <p>9 Q. By Plain Green negotiating 4 1/2 percent</p> <p>10 of the gross revenue, it's your understanding</p> <p>11 that that would roughly correlate to their</p> <p>12 negotiating a share of the profits in the --</p> <p>13 did you say 25 to 35 percent range?</p> <p>14 A. Approximately, that's correct.</p> <p>15 Q. Do you consider 4 1/2 percent of gross</p> <p>16 revenue to be an industry standard</p> <p>17 compensation term when it comes to contractual</p> <p>18 arrangements involving Native American tribes?</p> <p>19 A. It is extremely close. In the early</p> <p>20 part of the gaming business, the NIGC, which</p> <p>21 is the National Indian Gaming Congress, would</p> <p>22 create a 30 percent barrier, which is the most</p> <p>23 -- or the least that a tribe could get.</p> <p>24 So they set the standard of</p> |
| <p style="text-align: right;">Page 306</p> <p>1 grew, more and more tribes became wealthy.</p> <p>2 Those tribes no longer practice that. But the</p> <p>3 tribes that don't have large sums of money</p> <p>4 still require that the legal fees be paid by</p> <p>5 the corporation trying to do business with the</p> <p>6 tribe.</p> <p>7 Q. Thank you. Is it correct that you</p> <p>8 testified earlier today that Plain Green</p> <p>9 negotiated to receive a payment of 4 1/2</p> <p>10 percent of the gross revenue from its lending</p> <p>11 operation supported by Think Finance?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any understanding as to what</p> <p>14 45 percent of gross revenue generally</p> <p>15 correlates to, in terms of a percentage of</p> <p>16 profits?</p> <p>17 MR. SCHEFF: 45 percent --</p> <p>18 BY MR. SHELDON:</p> <p>19 Q. 4.5 percent. Do you have any</p> <p>20 understanding as to what 4.5 percent of gross</p> <p>21 revenue generally correlates to, in terms of a</p> <p>22 percentage of profit?</p> <p>23 A. There's a general rule of thumb that</p> <p>24 it's a 6X, 5 to 7X. So if you're getting 5</p> | <p style="text-align: right;">Page 308</p> <p>1 where you needed to be able to pay a tribe to</p> <p>2 do business with them.</p> <p>3 Q. Thank you. Do you consider the</p> <p>4 contractual arrangements involving Plain Green</p> <p>5 and Think Finance to be industry standard in</p> <p>6 terms of contractual arrangements involving</p> <p>7 Native American tribe?</p> <p>8 A. Yes, I do.</p> <p>9 MR. SHELDON: No further</p> <p>10 questions.</p> <p>11 MR. SCHEFF: Patrick?</p> <p>12 - - -</p> <p>13 EXAMINATION</p> <p>14 - - -</p> <p>15 BY MR. DAUGHERTY:</p> <p>16 Q. Mr. Haynes, have you ever heard of a</p> <p>17 company called National Credit Adjusters?</p> <p>18 A. No, sir.</p> <p>19 MR. DAUGHERTY: No further</p> <p>20 questions.</p> <p>21 MR. SCHEFF: Dan? Dave?</p> <p>22 MR. HERMAN: No questions.</p> <p>23 VIDEOTAPE OPERATOR: That</p> <p>24 concludes this deposition. The time is 3:38,</p> |